107th Congress
1st Session

COMMITTEE PRINT

No. 3

COMPILATION OF DEFENSE-RELATED FEDERAL LAWS

(Other Than Title 10, United States Code)

(As Amended Through December 31, 2000)

PREPARED FOR THE USE OF THE

COMMITTEE ON ARMED SERVICES

OF THE

HOUSE OF REPRESENTATIVES

APRIL 2001

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

TITLE 32—NATIONAL GUARD

TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

OTHER DEFENSE-RELATED LAWS

Part A. Weapons Programs and Limitations

Part B. War and National Defense

Part C. Personnel Matters

Part D. Family and Spouse Provisions

Part E. Health Care Matters

Part F. Base Closure and Realignment and Real Property Issues

Part G. Environmental Restoration and Conservation

Part H. Defense Industrial Base and Economic Conversion and Transition

Part I. Miscallaneous Matters

To use this index, bend the publication over and locate the desired section by following the black markers.

COMPILATION OF DEFENSE-RELATED FEDERAL LAWS

(As Amended Through December 31, 2000)

107th Congress
1st Session

COMMITTEE PRINT

No. 3

COMPILATION OF DEFENSE-RELATED FEDERAL LAWS

(Other Than Title 10, United States Code)

(As Amended Through December 31, 2000)

PREPARED FOR THE USE OF THE

COMMITTEE ON ARMED SERVICES

OF THE

HOUSE OF REPRESENTATIVES

APRIL 2001

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

U.S. GOVERNMENT PRINTING OFFICE

69–667 WASHINGTON : 2001

HOUSE COMMITTEE ON ARMED SERVICES

ONE HUNDRED SEVENTH CONGRESS

BOB STUMP, Arizona, *Chairman*

FLOYD SPENCE, South Carolina
DUNCAN HUNTER, California
JAMES V. HANSEN, Utah
CURT WELDON, Pennsylvania
JOEL HEFLEY, Colorado
JIM SAXTON, New Jersey
JOHN M. MCHUGH, New York
TERRY EVERETT, Alabama
ROSCOE G. BARTLETT, Maryland
HOWARD "BUCK" MCKEON, California
J. C. WATTS, JR., Oklahoma
MAC THORNBERRY, Texas
JOHN N. HOSTETTLER, Indiana
SAXBY CHAMBLISS, Georgia
VAN HILLEARY, Tennessee
JOE SCARBOROUGH, Florida
WALTER B. JONES, JR., North Carolina
LINDSEY GRAHAM, South Carolina
JIM RYUN, Kansas
BOB RILEY, Alabama
JIM GIBBONS, Nevada
ROBIN HAYES, North Carolina
HEATHER WILSON, New Mexico
KEN CALVERT,California
ROB SIMMONS, Connecticut
ANDER CRENSHAW, Florida
MARK STEVEN KIRK, Illinois
JO ANN DAVIS, Virginia
EDWARD L. SCHROCK, Virginia
W. TODD AKIN, Missouri
(VACANCY)

IKE SKELTON, Missouri
JOHN M. SPRATT, JR., South Carolina
SOLOMON P. ORTIZ, Texas
LANE EVANS, Illinois
GENE TAYLOR, Mississippi
NEIL ABERCROMBIE, Hawaii
MARTIN T. MEEHAN, Massachusetts
ROBERT A. UNDERWOOD, Guam
ROD R. BLAGOJEVICH, Illinois
SILVESTRE REYES, Texas
THOMAS H. ALLEN, Maine
VIC SNYDER, Arkansas
JIM TURNER, Texas
ADAM SMITH, Washington
LORETTA SANCHEZ, California
JAMES H. MALONEY, Connecticut
MIKE MCINTYRE, North Carolina
CIRO D. RODRIGUEZ, Texas
CYNTHIA A. MCKINNEY, Georgia
ELLEN O. TAUSCHER, California
ROBERT A. BRADY, Pennsylvania
ROBERT E. ANDREWS, New Jersey
BARON P. HILL, Indiana
MIKE THOMPSON, California
JOHN B. LARSON, Connecticut
SUSAN A. DAVIS, California
JAMES R. LANGEVIN, Rhode Island
(VACANCY)

ROBERT S. RANGEL, *Staff Director*

SUMMARY OF CONTENTS

	Page
I. Title 32—National Guard	1
II. Title 37—Pay and Allowances of the Uniformed Services	47
III. Other Defense-Related Laws	227
A. Weapons Programs and Limitations	229
B. War and National Defense	491
C. Personnel Matters	889
D. Family and Spouse Provisions	940
E. Health Care Matters	1027
F. Base Closure and Realignment and Real Property Issues	1114
G. Environmental Restoration and Conservation	1255
H. Defense Industrial Base and Economic Conversion and Transition	1309
I. Miscellaneous Matters	1397

CONTENTS

Page

Preface xv
I. TITLE 32—NATIONAL GUARD 1
Chapter 1. Organization 7
Chapter 3. Personnel 18
Chapter 5. Training 28
Chapter 7. Service, Supply, and Procurement 36
II. TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES 47
Chapter 1. Definitions 57
Chapter 3. Basic Pay 60
Chapter 5. Special and Incentive Pays 73
Chapter 7. Allowances 137
Chapter 9. Leave 194
Chapter 10. Payments to Missing Persons 198
Chapter 11. Payments to Mentally Incompetent Persons 208
Chapter 13. Allotments and Assignments of Pay 210
Chapter 15. Prohibitions and Penalties 212
Chapter 17. Miscellaneous Rights and Benefits 213
Chapter 19. Administration 217
III. OTHER DEFENSE-RELATED LAWS 227
A. WEAPONS PROGRAMS AND LIMITATIONS:
1. BALLISTIC MISSILE DEFENSE (including provisions from the following laws):
a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 229
b. National Defense Authorization Act for Fiscal Year 2000 232
c. National Missile Defense Act of 1999 237
d. Section 2705 of the Foreign Affairs Reform and Restructuring Act of 1998 (division G of Public Law 105–277) 238
e. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 239
f. National Defense Authorization Act for Fiscal Year 1998 242
g. National Defense Authorization Act for Fiscal Year 1997 245
h. Ballistic Missile Defense Act of 1995 and other provisions of the National Defense Authorization Act for Fiscal Year 1996 246
i. National Defense Authorization Act for Fiscal Year 1995 252
j. National Defense Authorization Act for Fiscal Year 1994 254
k. National Defense Authorization Act for Fiscal Year 1993 261
l. National Defense Authorization Act for Fiscal Year 1991 265
m. National Defense Authorization Act for Fiscal Years 1988 and 1989 266
2. PROVISIONS RELATED TO CHEMICAL AND BIOLOGICAL WEAPONS (including provisions from the following laws):
a. Destruction of Existing Stockpile of Lethal Chemical Agents and Munitions (Section 1412 of Public Law 99–145) 271

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
A. WEAPONS PROGRAMS AND LIMITATIONS—Continued
2. PROVISIONS RELATED TO CHEMICAL AND BIOLOGICAL WEAPONS (including provisions from the following laws)—Continued
b. Chemical Weapon Demilitarization Provisions From Annual Defense Authorization Acts 276
c. Section 409 of the Act of November 19, 1969 (50 U.S.C. 1511 et seq.) 286
d. Other Laws Related to Chemical and Biological Weapons 288
e. Chemical Weapons Convention Implementation Act of 1998 294
3. ARMS CONTROL MATTERS (including provisions from the following laws):
a. Subtitle E of title X of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 321
b. Nuclear Weapons Stockpile Life Extension Program (section 3133 of Public Law 106–65) 323
c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 325
d. National Defense Authorization Act for Fiscal Year 1998 327
e. National Defense Authorization Act for Fiscal Year 1996 335
f. National Defense Authorization Act for Fiscal Year 1995 340
g. National Defense Authorization Act for Fiscal Year 1994 345
h. National Defense Authorization Act for Fiscal Year 1993 (including Weapons of Mass Destruction Control Act of 1992 and Iran-Iraq Arms Non-Proliferation Act of 1992) 357
i. National Defense Authorization Act for Fiscal Years 1992 and 1993 369
j. National Defense Authorization Act for Fiscal Years 1990 and 1991 373
k. National Defense Authorization Act, Fiscal Year 1989 375
4. EXPORT CONTROL MATTERS (including provisions from the following laws):
a. Arms Export Control Act 378
b. Landmine Export Moratorium (Section 1365 of Public Law 102–484) 458
c. Export Controls and Reporting Requirements Regarding High Performance Computers (Sections 1211–1215 and 3157 of Public Law 105–85) 460
d. Satellite Export Controls (Subtitle B of title XV of Public Law 105–261) 465
e. Release of Export Information and Nuclear Export Reporting (Sections 1522 and 1523 of Public Law 105–261) 471
f. Enhancement of Technology Security Program of the Department of Defense (Section 912 of Public Law 106–65) 473
g. Proliferation and Export Control Provisions of title XIV of Public Law 106–65 475
5. NAVY MINE COUNTERMEASURES PROGRAMS (Section 216 of Public Law 102–190) 485
6. HIGH ENERGY LASER PROGRAMS (Subtitle D of title II of Public Law 106–398) 487
B. WAR AND NATIONAL DEFENSE:
1. NATIONAL SECURITY ACT OF 1947 491
2. WAR POWERS RESOLUTION 524
3. NATIONAL EMERGENCIES ACT 529

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
B. WAR AND NATIONAL DEFENSE—Continued
4. MILITARY SELECTIVE SERVICE ACT (Including Proclamation of the President Regarding Registration) 533
5. DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION (including provisions from the following laws):
a. Section 247 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 573
b. Defense Against Weapons of Mass Destruction Act of 1998 576
c. Sections 234 and 1051 of the National Defense Authorization Act for Fiscal Year 1998 579
d. Defense Against Weapons of Mass Destruction Act of 1996 582
e. Combatting Proliferation of Weapons of Mass Destruction Act of 1996 596
6. NATIONAL DEFENSE STOCKPILE AND NAVAL PETROLEUM RESERVE (including provisions from the following laws):
a. Strategic and Critical Materials Stock Piling Act 602
b. Executive Order 12626—National Defense Stockpile Manager . 613
c. Annual Defense Authorization and Appropriations Acts 615
d. Sale of Naval Petroleum Reserve Numbered 1 642
e. Disposal of Other Naval Petroleum Reserves 649
7. RELATIONS WITH NATO COUNTRIES AND OTHER NATIONS (including provisions relating to the presence of United States Armed Forces in the Balkans and Cooperative Threat Reduction with States of the Former Soviet Union):
a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 657
b. Department of Defense Appropriations Act, 2001 669
c. National Defense Authorization Act for Fiscal Year 2000 669
d. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 680
e. National Defense Authorization Act for Fiscal Year 1998 695
f. National Defense Authorization Act for Fiscal Year 1997 702
g. National Defense Authorization Act for Fiscal Year 1996 705
h. National Defense Authorization Act for Fiscal Year 1995 713
i. National Defense Authorization Act for Fiscal Year 1994 717
j. National Defense Authorization Act for Fiscal Year 1993 722
k. National Defense Authorization Act for Fiscal Years 1992 and 1993 725
l. Department of Defense Appropriations Act, 1991 728
m. National Defense Authorization Act for Fiscal Year 1991 729
n. National Defense Authorization Act for Fiscal Years 1990 and 1991 731
o. Department of Defense Appropriations Act, 1989 731
p. Department of Defense Authorization Act, 1985 (Permanent Ceiling on U.S. Deployment in NATO Countries) 733
q. Assignment of Military Personnel for Overseas Management of Foreign Assistance Programs (Section 515 of Foreign Assistance Act of 1961) 736
8. SEALIFT AND SHIPBUILDING PROGRAMS (including provisions from the following laws):
a. National Defense Authorization Act for Fiscal Year 1994 738
b. National Defense Authorization Act for Fiscal Year 1993 740
c. National Defense Authorization Act for Fiscal Year 1991 745

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
B. WAR AND NATIONAL DEFENSE—Continued
9. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES (including provisions from the following laws):
a. Department of Defense Appropriations Act, 2001 747
b. National Defense Authorization Act for Fiscal Year 2000 747
c. National Defense Authorization Act for Fiscal Year 1998 750
d. National Defense Authorization Act for Fiscal Year 1997 754
e. National Defense Authorization Act for Fiscal Year 1995 756
f. National Defense Authorization Act for Fiscal Year 1993 757
g. National Defense Authorization Act for Fiscal Year 1991 759
10. PANAMA CANAL ACT OF 1979 762
11. SPOILS OF WAR ACT OF 1994 816
12. DEFENSE PRODUCTION ACT OF 1950 818
13. SPECIAL ACCESS PROGRAMS (Section 1152 of Public Law 103–160) 869
14. NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT (Title XXXII of Public Law 106–65) 872
C. PERSONNEL MATTERS
1. PROVISIONS REGARDING POWS AND MIAS (including the following laws):
a. Funeral Transportation and Living Expense Benefits Act of 1974 (Public Law 93–257) 889
b. Sections 1082–1084 of Public Law 102–190 890
c. Subtitle D of title X of Public Law 103–337 892
d. Section 934 of Public Law 105–85 895
e. Section 1082 of Public Law 105–85 896
2. UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT (Public Law 99–410) 898
3. COAST AND GEODETIC SURVEY COMMISSIONED OFFICERS' ACT OF 1948 903
4. EDUCATIONAL SERVICES FOR MEMBERS (Section 1212 of Public Law 99–145) 911
5. COUNTERINTELLIGENCE POLYGRAPH PROGRAMS:
a. Section 1121 of Public Law 100–180 913
b. Section 3154 of Public Law 106–65 915
6. RECRUITING EFFORTS:
a. Treating Persons with GED or Home School Diploma as Eligible for Enlistment in Armed Forces (Section 571 of Public Law 105–261) 918
b. Army College First Pilot Program for Delayed Entry into Active Service in the Army (Section 573 of Public Law 106–65) 919
c. Pilot programs to enhance recruiting (Sections 561 and 564 of Public Law 106–398) 921
7. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY EXPERIMENTAL PERSONNEL MANAGEMENT PROGRAM FOR TECHNICAL PERSONNEL (Section 1101 of Public Law 105–261) . 925
8. DEFENSE REFORM INITIATIVE ENTERPRISE PROGRAM FOR MILITARY MANPOWER AND PERSONNEL INFORMATION (Section 8147 of Public Law 105–262) 928
9. TROOPS-TO-TEACHERS PROGRAM ACT OF 1999 (Title XVII of Public Law 106–65) 930

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
C. PERSONNEL MATTERS—Continued
10. PILOT PROGRAM FOR REENGINEERING THE EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS (Section 1111 of 106–398) 938
D. FAMILY AND SPOUSE PROVISIONS:
1. SPECIAL ANNUITY PROGRAMS FOR CERTAIN SURVIVING SPOUSES NOT COVERED BY SURVIVOR BENEFIT PLAN (including the following laws):
a. Section 4 of Public Law 92–425 (Minimum Income for Certain Widows) 940
b. Section 5 of the Uniformed Services Survivor Benefits Amendments of 1980 941
c. Section 653 of the National Defense Authorization Act, Fiscal Year 1989 942
d. Section 635 of the National Defense Authorization Act for Fiscal Year 1996 (Relief from Previous Overpayments) 944
e. Section 644 of the National Defense Authorization Act for Fiscal Year 1998 (Annuities for Certain Military Surviving Spouses) 944
f. Section 642 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (SBP open enrollment period) . 945
2. DEFENSE DEPENDENTS' EDUCATION (including the following laws):
a. Defense Dependents' Education Act of 1978 949
b. Pilot Program on Private Operation of Defense Dependents' Schools (Section 355 of Public Law 104–106) 957
c. Defense Department Overseas Teachers Pay and Personnel Practices Act 957
3. IMPACT AID (including provisions from the following laws):
a. Title VIII of the Elementary and Secondary Education Act of 1965 (Impact Aid) 965
b. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 1002
c. National Defense Authorization Act for Fiscal Year 1993 1006
4. COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR (Section 612 of Public Law 99–661) 1011
5. REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL (Section 637 of Public Law 100–180) 1013
6. PREVENTION OF DOMESTIC VIOLENCE (including provisions from the following laws):
a. Victims' Advocates Programs in Department of Defense (Section 534 of Public Law 103–337) 1015
b. Subtitle K of title V of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) 1016
7. CHILD SUPPORT AND ALIMONY OBLIGATIONS
a. Enforcement of Child Support Obligations of Members (Section 363 of Public Law 104–193) 1023
b. Pilot Program on Alternative Notice of Receipt of Legal Process for Garnishment of Federal Pay for Child Support and Alimony (Section 1061 of Public Law 105–261) 1024

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
E. HEALTH CARE MATTERS:
1. MILITARY USE OF FORMER PUBLIC HEALTH SERVICE HOSPITALS (Subtitle C of title VII of the National Defense Authorization Act for Fiscal Year 1997) 1027
2. HEALTH CARE ISSUES REGARDING GULF WAR VETERANS (including provisions from the following laws):
a. National Defense Authorization Act for Fiscal Year 1997 1033
b. Persian Gulf War Veterans' Benefits Act (title I of Public Law 103–446) 1034
c. National Defense Authorization Act for Fiscal Year 1995 1040
d. National Defense Authorization Act for Fiscal Year 1994 1043
e. Persian Gulf War Veterans' Health Status Act (title VII of Public Law 102–585) 1045
f. National Defense Authorization Act for Fiscal Years 1992 and 1993 1050
3. HEALTH CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS (including the following laws):
a. Sections 8111 and 8111A of title 38, United States Code 1052
b. Title II of the Veterans Health Care Act of 1992 1057
c. Interdepartmental Cooperation in the Delivery of Medical Care (Section 745 of Public Law 105–261) 1059
d. Joint Telemedicine and Telepharmacy Demonstration Projects (Section 724 of Public Law 106–65) 1063
e. Access to Care for TRICARE-Eligible Military Retirees (Section 113 of Public Law 106–117) 1064
f. Joint Initiatives With Department of Veterans Affairs (Subtitle E of title VII of Public Law 106–398) 1065
4. TRICARE and CHAMPUS PROGRAMS (including provisions from the following laws):
a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 1067
b. Department of Defense Appropriations Act, 2001 1069
c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 1069
d. National Defense Authorization Act for Fiscal Year 1996 1071
e. National Defense Authorization Act for Fiscal Year 1994 1073
f. National Defense Authorization Act for Fiscal Year 1993 1074
g. National Defense Authorization Act for Fiscal Years 1992 and 1993 1077
h. National Defense Authorization Act for Fiscal Year 1991 1078
5. TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION (Section 722 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999; Public Law 105–261) 1079
6. MEDICARE SUBVENTION DEMONSTRATION PROJECT FOR MILITARY RETIREES (Section 1896 of the Social Security Act) 1082
7. RESTRICTIONS ON THE USE OF HUMAN SUBJECTS FOR TESTING OF CHEMICAL OR BIOLOGICAL AGENTS (Section 1078 of Public Law 105–85) 1090
8. MISCELLANEOUS HEALTH CARE MATTERS (including provisions from the following laws):
a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 1092
b. National Defense Authorization Act for Fiscal Year 2000 1097

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
E. HEALTH CARE MATTERS—Continued
8. MISCELLANEOUS HEALTH CARE MATTERS (including provisions from the following laws)—Continued
c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 1101
d. National Defense Authorization Act for Fiscal Year 1998 1102
e. National Defense Authorization Act for Fiscal Year 1997 1107
f. National Defense Authorization Act for Fiscal Year 1995 1108
g. National Defense Authorization Act for Fiscal Year 1993 1111
F. BASE CLOSURE AND REALIGNMENT AND REAL PROPERTY ISSUES:
1. 1990 BASE REALIGNMENT AND CLOSURE ACT 1114
2. 1988 BASE REALIGNMENT AND CLOSURE ACT 1155
3. SECTION 1013 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966 (42 U.S.C. 3374) 1177
4. MISCELLANEOUS BASE REALIGNMENT AND CLOSURE PROVISIONS (including provisions from the following laws):
a. Military Construction Authorization Act for Fiscal Year 1998 .. 1178
b. Section 112 of the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 1182
c. Military Construction Authorization Act for Fiscal Year 1995 .. 1182
d. Military Construction Authorization Act for Fiscal Year 1994 .. 1183
e. Military Construction Authorization Act for Fiscal Year 1992 .. 1188
5. USE OF SURPLUS PROPERTY TO ASSIST HOMELESS (including the following laws):
a. Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) 1190
b. Section 2(e) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 1195
6. SURPLUS PROPERTY UNDER FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949 (sections 203 and 204; 40 U.S.C. 484, 485) 1198
7. PROVISIONS RELATED TO THE CLOSURE AND TRANSFER OF DEPARTMENT OF ENERGY FACILITIES (including the following laws):
a. Projects to Accelerate Closure Activities at Defense Nuclear Facilities (Section 3143 of Public Law 104–201) 1217
b. Transfers of Real Property at Certain Department of Energy Facilities (Section 3158 of Public Law 105–85) 1219
c. Employee Incentives for Employees at Closure Project Facilities (Section 3136 of Public Law 106–398) 1221
8. ARMED FORCES RETIREMENT HOME (including the following laws):
a. Armed Forces Retirement Home Act of 1991 1225
b. Disposal of District of Columbia tract (Section 1053 of Public Law 104–201) 1241
9. USE OF NAVAL INSTALLATIONS FOR EMPLOYMENT TRAINING OF NONVIOLENT OFFENDERS (Section 1374 of Public Law 103–160) 1243
10. PURCHASE OF FIRE, SECURITY, POLICE, PUBLIC WORKS, AND UTILITY SERVICES AT CALIFORNIA INSTALLATIONS (Section 816 of Public Law 103–337) 1245

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
F. BASE CLOSURE AND REALIGNMENT AND REAL PROPERTY ISSUES—Continued
11. DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS (Section 335 of Public Law 104–106) 1246
12. BASE EFFICIENCY PROJECT AT BROOKS AIR FORCE BASE (Section 136 of Public Law 106–246) 1248
13. IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES (Section 374 of Public Law 106–398) 1253
G. ENVIRONMENTAL RESTORATION AND CONSERVATION:
1. SELECTED PROVISIONS FROM ANNUAL DEFENSE AUTHORIZATION ACTS (including provisions from the following laws):
a. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 1255
b. National Defense Authorization Act for Fiscal Year 1998 1257
c. National Defense Authorization Act for Fiscal Year 1997 1260
d. National Defense Authorization Act for Fiscal Year 1996 1271
e. National Defense Authorization Act for Fiscal Year 1995 1272
f. National Defense Authorization Act for Fiscal Year 1994 1272
g. National Defense Authorization Act for Fiscal Year 1993 1275
h. National Defense Authorization Act for Fiscal Years 1992 and 1993 1281
i. National Defense Authorization Act for Fiscal Year 1991 1284
j. National Defense Authorization Act for Fiscal Years 1990 and 1991 1285
2. TITLE I OF SIKES ACT 1287
3. SECTION 120 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. 9620) 1295
4. WAIVER OF SOVEREIGN IMMUNITY UNDER SOLID WASTE DISPOSAL ACT (Section 6001; 42 U.S.C. 6961) 1306
H. DEFENSE INDUSTRIAL BASE AND ECONOMIC CONVERSION AND TRANSITION:
1. SELECTED PROVISIONS FROM DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE ACTS (including provisions from the following laws):
a. Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994 1309
b. Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993 1313
c. Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 1324
d. Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 1348
2. NATIONAL SCIENCE CENTER FOR COMMUNICATIONS AND ELECTRONICS (Section 1459 of Public Law 99–145) 1354
3. SCIENCE AND TECHNOLOGY POLICY INSTITUTE (Section 822 of Public Law 101–510) 1357
4. MENTOR-PROTEGE PILOT PROGRAM (Section 831 of Public Law 101–510) 1359
5. AUTHORITY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS (Section 845 of Public Law 103–160) 1367

Page

III. OTHER DEFENSE-RELATED LAWS—Continued
H. DEFENSE INDUSTRIAL BASE AND ECONOMIC CONVERSION AND TRANSITION—Continued
6. DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH (Section 257 of Public Law 103–337) 1370
7. POLICY REGARDING PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR FOR THE DEPARTMENT OF DEFENSE (Section 311 of Public Law 104–106) 1372
8. DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM (Section 2892 of Public Law 104–106) 1377
9. PILOT PROGRAMS FOR CONVERTED DEFENSE EMPLOYEES (Section 1616 of Public Law 104–201) 1379
10. PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES (Section 141 of Public Law 105–85) 1384
11. DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM (Section 203 of Public Law 105–85) 1386
12. PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE. (Section 246 of Public Law 105–261 and section 245 of Public Law 106–65) 1389
13. NAVY HIGHER EDUCATION PILOT PROGRAM REGARDING ADMINISTRATION OF BUSINESS RELATIONSHIPS BETWEEN GOVERNMENT AND PRIVATE SECTOR (Section 1108 of Public Law 105–85) 1392
14. ARSENAL SUPPORT PROGRAM INITIATIVE (Section 343 of Public Law 106–398) 1394
I. MISCELLANEOUS MATTERS:
1. INSPECTOR GENERAL ACT OF 1978 1397
2. AUTHORIZATION FOR INSTRUCTION OF CIVILIAN STUDENTS AT FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE (Section 559 of Public Law 103–337) 1425
3. CORPORATION FOR THE PROMOTION OF RIFLE PRACTICE AND FIREARMS SAFETY (Chapter 407 of title 36, United States Code) 1427
4. MISCELLANEOUS AUTHORITIES TO TRANSFER EXCESS DEFENSE PERSONAL PROPERTY:
a. Wildfire Suppression Aircraft Transfer Act of 1996 (Public Law 104–307) 1434
b. Authority to Sell Aircraft and Aircraft Parts for Use in Responding to Oil Spills (Section 740 of Public Law 106–181) 1435
5. WARRANTY CLAIMS RECOVERY PILOT PROGRAM AND FRAUD, WASTE, AND ABUSE INVESTIGATIONS (Sections 391 and 392 of Public Law 105–85) 1438
6. GOVERNMENT INFORMATION SECURITY REFORM:
a. Subchapter II of chapter 35, title 44, United States Code 1440
b. Section 1062 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 1446

For changes after the closing date of this publication (December 31, 2000) to provisions of law in this publication that have U.S. Code section numbers, see the United States Code Classification Tables published by the Office of the Law Revision Counsel of the House of Representatives at **http://uscode.house.gov/uscct.htm.**

PREFACE

This publication contains the text of title 32, United States Code (the National Guard), title 37, United States Code (Pay and Allowances of the Uniformed Services), and additional provisions of law of interest to the Committee on Armed Services of the House of Representatives and the defense community. In the case of titles 32 and 37, United States Code, this publication shows the current text of the titles and a listing, after each section, of the statute that added the section to the Code and any statutes that have since amended it. 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 the actual textual changes made by each amendment and relevant effective date and transitional provisions. Commercial publications of the Code also indicate relevant court decisions referring to a section of the Code.

The Committee on Armed Services of the House of Representatives also produces two other publications containing defense-related laws. The first publication contains the text of title 10, United States Code. This title of the United States Code contains the organic law governing the Armed Forces of the United States and provides for the organization of the Department of Defense, including the military departments and the reserve components. Title 10 was 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. The other relevant committee publication is captioned "Laws Relating to Federal Procurement" and is a comprehensive compilation of Federal acquisition statutes.

I. TITLE 32—NATIONAL GUARD

[As amended through the end of the 106th Congress, December 31, 2000]

TABLE OF CHAPTERS OF TITLE 32 [1]

TITLE 32, UNITED STATES CODE

NATIONAL GUARD

Chap.		Sec.
1.	Organization	101
3.	Personnel	301
5.	Training	501
7.	Service, Supply, and Procurement	701

TABLE OF SECTIONS OF TITLE 32

CHAPTER 1—ORGANIZATION

Sec.
101. Definitions.
102. General policy.
103. Branches and organizations.
104. Units: location; organization; command.
105. Inspection.
106. Annual appropriations.
107. Availability of appropriations.
108. Forfeiture of Federal benefits.
109. Maintenance of other troops.
110. Regulations.
111. Suspension of certain provisions of this title.
112. Drug interdiction and counter-drug activities.
113. Federal financial assistance for support of additional duties assigned to the Army National Guard.
114. Funeral honors functions at funerals for veterans.
115. Funeral honors duty performed as a Federal function.

CHAPTER 3—PERSONNEL

Sec.
301. Federal recognition of enlisted members.
302. Enlistments, reenlistments, and extensions.
303. Active and inactive enlistments and transfers.
304. Enlistment oath.
305. Federal recognition of commissioned officers: persons eligible.
307. Federal recognition of officers: examination; certificate of eligibility.
308. Federal recognition of officers: temporary recognition.
309. Federal recognition of National Guard officers: officers promoted to fill vacancies.

[1] This table of chapters and the following table of sections are not part of title 32, as codified in the United States Code, but are included for the convenience of the reader.

310. Federal recognition of National Guard officers: automatic recognition.
312. Appointment oath.
313. Appointments and enlistments: age limitations.
314. Adjutants general.
315. Detail of regular members of Army and Air Force to duty with National Guard.
316. Detail of members of Army National Guard for rifle instruction of civilians.
317. Command during joint exercises with Federal troops.
[318 to 321. Repealed.]
322. Discharge of enlisted members.
323. Withdrawal of Federal recognition.
324. Discharge of officers; termination of appointment.
325. Relief from National Guard duty when ordered to active duty.
326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures.
327. General courts-martial of National Guard not in Federal service.
328. Special courts-martial of National Guard not in Federal service.
329. Summary courts-martial of National Guard not in Federal service.
330. Confinement instead of fine.
331. Dismissal or dishonorable discharge.
332. Compelling attendance of accused and witnesses.
333. Execution of process and sentence.

CHAPTER 5—TRAINING

Sec.
501. Training generally.
502. Required drills and field exercises.
503. Participation in field exercises.
504. National Guard schools and small arms competitions.
505. Army and Air Force schools and field exercises.
506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard.
507. Instruction in firing; supply of ammunition.
508. Assistance for certain youth and charitable organizations.
509. National Guard Challenge Program of opportunities for civilian youth.

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec.
701. Uniforms, arms, and equipment to be same as Army or Air Force.
702. Issue of supplies.
703. Purchases of supplies by States from Army or Air Force.
704. Accountability: relief from upon order to active duty.
705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force.
706. Return of arms and equipment upon relief from Federal service.
707. Use of public buildings for offices by instructors.
708. Property and fiscal officers.
709. Technicians: employment, use, status.
710. Accountability for property issued to the National Guard.
711. Disposition of obsolete or condemned property.
712. Disposition of proceeds of condemned stores issued to National Guard.
713. Official mail: free transmission.
714. Final settlement of accounts: deceased members.
715. Property loss; personal injury or death: activities under certain sections of this title.
716. Claims for overpayment of pay and allowances, and travel and transportation allowances.

Chap. Sec.
1. Organization 101
3. Personnel 301
5. Training 501
7. Service, Supply, and Procurement 701

CHAPTER 1—ORGANIZATION

Sec.
101. Definitions.
102. General policy.
103. Branches and organizations.
104. Units: location; organization; command.
105. Inspection.
106. Annual appropriations.
107. Availability of appropriations.
108. Forfeiture of Federal benefits.
109. Maintenance of other troops.
110. Regulations.
111. Suspension of certain provisions of this title.
112. Drug interdiction and counter-drug activities.
113. Federal financial assistance for support of additional duties assigned to the Army National Guard.
114. Funeral honors functions at funerals for veterans.
115. Funeral honors duty performed as a Federal function.

§ 101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) "Territory" means any Territory organized after this title is enacted, so long as it remains a Territory. However, for purposes of this title and other 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, "Territory" includes Guam and the Virgin Islands.

(2) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(3) "National Guard" means the Army National Guard and the Air National Guard.

(4) "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.

(5) "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.

(6) "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.

(7) "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.

(8) "Officer" means commissioned or warrant officer.

(9) "Enlisted member" means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.

(10) "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.

(11) "Rank" means the order of precedence among members of the armed forces.

(12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as 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. It does not include full-time National Guard duty.

(13) "Supplies" includes material, equipment, and stores of all kinds.

(14) "Shall" is used in an imperative sense.

(15) "May" is used in a permissive sense. The words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

(16) "Includes" means "includes but is not limited to".

(17) "Pay" includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(18) "Spouse" means husband or wife, as the case may be.

(19) "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 this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 596; Sept. 2, 1958, P.L. 85–861, § 2(1), 72 Stat. 1542; June 25, 1959, P.L. 86–70, § 27, 73 Stat. 148; July 12, 1960, P.L. 86–624, § 22, 74 Stat. 417; Oct. 13, 1972, P.L. 92–492, § 2(a), 86 Stat. 810; Dec. 12, 1980, P.L. 96–513, § 507(a), 94 Stat. 2919; Dec. 24, 1980, P.L. 96–600, § 3(a), 94 Stat. 3493; Oct. 19, 1984, P.L. 98–525, § 414(b)(1), 98 Stat. 2519; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 102. General policy

In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. 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 such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 597.)

§ 103. Branches and organizations

The Army National Guard of each State and Territory, Puerto Rico and the District of Columbia includes such members of the staff corps corresponding to the staff corps of the Army as the Secretary of the Army may authorize.

(Aug. 10, 1956, ch. 1041, 70A Stat. 597; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 104. Units: location; organization; command

(a) Each State and Territory, Puerto Rico, and may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico or the District of Columbia may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents—

(1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded; and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), (2), 102 Stat. 2059.)

§ 105. Inspection

(a) Under regulations prescribed by him, the Secretary of the Army shall have an inspection made by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether—

(1) the amount and condition of property held by the Army National Guard are satisfactory;

(2) the Army National Guard is organized as provided in this title;

(3) the members of the Army National Guard meet prescribed physical and other qualifications;

(4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;

(5) Army National Guard records are being kept in accordance with this title;

(6) the accounts and records of each property and fiscal officer are properly maintained; and

(7) the units of the Army National Guard meet requirements for deployment.

The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

(b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and to retain that property; and for determining which organizations and persons constitute units and members of the National Guard; and for determining which units of the National Guard meet deployability standards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598; July 30, 1977, P.L. 95–79, § 804(a), 91 Stat. 333; Oct. 23, 1992, P.L. 102–484, § 1122, 106 Stat. 2540.)

§ 106. Annual appropriations

Sums will be appropriated annually, out of any money in the Treasury not otherwise appropriated, for the support of the Army National Guard and the Air National Guard, including the issue of arms, ordnance stores, quartermaster stores, camp equipage, and other military supplies, and for the payment of other expenses authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 599.)

§ 107. Availability of appropriations

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for—

(1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;

(2) the necessary expenses of officers of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army General Staff or the Air Staff, traveling to and from annual conventions of the National Guard Association of the United States or the Adjutants General Association;

(3) the transportation of supplies furnished to the National Guard as permanent equipment;

(4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;

(5) the expenses of the National Guard Bureau, including clerical services;

(6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;

(7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and

(8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State or Territory, Puerto Rico or the District of Columbia. Payable expenses include allowances for subsistence and housing under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(c) The pay and allowances for the Chief of the National Guard Bureau and officers of the Army National Guard of the United States or the Air National Guard of the United States called to active duty under section 12402 of title 10 shall be paid from appropriations for the pay of the Army National Guard or Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 599; Sept. 11, 1967, P.L. 90–83, § 4, 81 Stat. 220; Aug. 13, 1971, P.L. 92–119, § 1(a), 85 Stat. 340; Sept. 13, 1982, P.L. 97–258, § 2(h), 96 Stat. 1061; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059; Oct. 5, 1994, P.L. 103–337, § 1676(a)(1), 108 Stat. 3019; Nov. 18, 1997, P.L. 105–85, § 603(d)(2)(E), 111 Stat. 1783.)

§ 108. Forfeiture of Federal benefits

If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600; Oct. 5, 1994, P.L. 103–337, § 904(c), 108 Stat. 2827.)

§ 109. Maintenance of other troops

(a) In time of peace, a State or Territory, Puerto Rico, the Virgin Islands or the District of Columbia may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State or Territory, Puerto Rico, the Virgin Islands or the District of Columbia to use its National Guard or its defense forces authorized by subsection

(c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State or Territory, Puerto Rico, the Virgin Islands or the District of Columbia may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.

(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600; Sept. 2, 1958, P.L. 85–861, § 2(2), 72 Stat. 1542; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 110. Regulations

The President shall prescribe regulations, and issue orders, necessary to organize, discipline, and govern the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600.)

§ 111. Suspension of certain provisions of this title

In time of war, or of emergency declared by Congress, the President may suspend the operation of any provision of sections 307(e), 309, 310, and 323(d) and (e) of this title with respect to the Army National Guard or the Air National Guard.

(Added P.L. 85–861, § 2(3), Sept. 2, 1958, 72 Stat. 1543.)

§ 112. Drug interdiction and counter-drug activities

(a) FUNDING ASSISTANCE.—The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed $5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if—

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) PLAN REQUIREMENTS.—A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) EXAMINATION OF PLAN.—(1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if—

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) EXCLUSION FROM END-STRENGTH COMPUTATION.—Members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 1993 otherwise implementing) this section shall not be counted toward the annual end strength authorized for reserves on active duty in support of the reserve components of the armed forces or toward the strengths authorized in sections 12011 and 12012 of title 10.

(f) END STRENGTH LIMITATION.—(1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard—

(A) on full-time National Guard duty under section 502(f) of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days; or

(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(g) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(h) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(i) DEFINITIONS.—For purposes of this section:

(1) The term "drug interdiction and counter-drug activities", with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(3) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(Added P.L. 101-189, § 1207(a)(1), Nov. 29, 1989, 103 Stat. 1564, and amended P.L. 102–25, § 703, April 6, 1991, 105 Stat. 118; P.L. 102–396, § 9099A, Oct 6, 1992, 106 Stat. 1926; P.L. 104–106, § 1021, Feb. 10, 1996, 110 Stat. 426; Nov. 18, 1997, P.L. 105–85, § 1031, 111 Stat. 1880; P.L. 105–261, § 1022, Oct. 16, 1998, 112 Stat. 2120; P.L. 106–65, § 1021, Oct. 5, 1999, 113 Stat. 746.)

§ 113. Federal financial assistance for support of additional duties assigned to the Army National Guard

(a) AUTHORITY.—The Secretary of the Army may provide financial assistance to a State to support activities carried out by the Army National Guard of the State in the performance of duties that the Secretary has assigned, with the consent of the Chief of the National Guard Bureau, to the Army National Guard of the State. The Secretary shall determine the amount of the assistance that is appropriate for the purpose.

(b) COVERED ACTIVITIES.—(1) Except as provided in paragraph (2), financial assistance may be provided for the performance of an activity by the Army National Guard under subsection (a) only if—

(A) the activity is carried out in the performance of a responsibility of the Secretary of the Army under paragraph (6), (10), or (11) of section 3013(b) of title 10; and

(B) the Army National Guard was selected to perform the activity under competitive procedures that permit all qualified public-sector and private-sector sources to submit offers and be considered for selection to perform the activity on the basis of the offers.

(2) Paragraph (1)(B) does not apply to an activity that, on October 17, 1998, was performed for the Federal Government by employees of the Federal Government or employees of a State.

(c) DISBURSEMENT THROUGH NATIONAL GUARD BUREAU.—The Secretary of the Army shall disburse any contribution under this section through the Chief of the National Guard Bureau.

(d) AVAILABILITY OF FUNDS.—Funds appropriated for the Army for a fiscal year are available for providing financial .assistance under this section in support of activities carried out by the Army National Guard during that fiscal year.

(Added P.L. 105-85, § 386(a), Nov. 18, 1997, 111 Stat. 1712, and amended P.L. 105–261, § 375(a), Oct. 16, 1998, 112 Stat. 1992; P.L. 106–65, § 1066(d)(4), Oct. 5, 1999, 113 Stat. 773.)

§ 114. Funeral honors functions at funerals for veterans

Subject to such regulations and restrictions as may be prescribed by the Secretary concerned, the performance of funeral honors functions by members of the National Guard at funerals for veterans of the armed forces may be treated by the Secretary concerned as a Federal function for which appropriated funds may be used. Any such performance of funeral honors functions at such a funeral may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 115 of this title.

(Added P.L. 105-85, § 517(a), Nov. 18, 1997, 111 Stat. 1733, and amended P.L. 105–261, § 567(d), Oct. 16, 1998, 112 Stat. 2031; P.L. 106–65, §§ 578(g)(1), 578(k)(3)(A), Oct. 5, 1999, 113 Stat. 627, 631.)

§ 115. Funeral honors duty performed as a Federal function

(a) ORDER TO DUTY.—A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to funeral honors duty, with the consent of the member, to prepare for or perform funeral honors functions at the funeral of a veteran under section 1491 of title 10. 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 perform funeral honors functions under this section without the consent of the Governor or other appropriate authority of the State concerned.

(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 title 10; 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.

(Added P.L. 106–65, § 578(g)(2), Oct. 5, 1999, 113 Stat. 627, and amended P.L. 106–398, § 1 (§ 575(a)(1)), Oct. 30, 2000, 114 Stat. 1654A–138.)

CHAPTER 3—PERSONNEL

Sec.

301. Federal recognition of enlisted members.
302. Enlistments, reenlistments, and extensions.
303. Active and inactive enlistments and transfers.
304. Enlistment oath.
305. Federal recognition of commissioned officers: persons eligible.
307. Federal recognition of officers: examination; certificate of eligibility.
308. Federal recognition of officers: temporary recognition.
309. Federal recognition of National Guard officers: officers promoted to fill vacancies.
310. Federal recognition of National Guard officers: automatic recognition.
312. Appointment oath.
313. Appointments and enlistments: age limitations.
314. Adjutants general.
315. Detail of regular members of Army and Air Force to duty with National Guard.
316. Detail of members of Army National Guard for rifle instruction of civilians.
317. Command during joint exercises with Federal troops.
[318 to 321. Repealed.]
322. Discharge of enlisted members.
323. Withdrawal of Federal recognition.
324. Discharge of officers; termination of appointment.
325. Relief from National Guard duty when ordered to active duty.
326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures.
327. General courts-martial of National Guard not in Federal service.
328. Special courts-martial of National Guard not in Federal service.
329. Summary courts-martial of National Guard not in Federal service.
330. Confinement instead of fine.
331. Dismissal or dishonorable discharge.
332. Compelling attendance of accused and witnesses.
333. Execution of process and sentence.

§ 301. Federal recognition of enlisted members

To be eligible for Federal recognition as an enlisted member of the National Guard, a person must have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved. He becomes federally recognized upon enlisting in a federally recognized unit or organization of the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601.)

§ 302. Enlistments, reenlistments, and extensions

(a) Under regulations to be prescribed by the Secretary concerned, original enlistments in the National Guard may be accepted for—

(1) any specified term, not less than three years, for persons who have not served in an armed force; or

(2) any specified term, not less than one year, for persons who have served in any armed force.

(b) Under regulations to be prescribed by the Secretary concerned, reenlistment in the National Guard may be accepted for

any specified period, or, if the person last served in one of the highest five enlisted grades, for an unspecified period.

(c) Enlistments or reenlistments in the National Guard may be extended—

(1) under regulations to be prescribed by the Secretary concerned, at the request of the member, for any period not less than six months; or

(2) by proclamation of the President, if Congress declares an emergency, until six months after termination of that emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601; Oct. 4, 1961, P.L. 87–378, § 5(1), 75 Stat. 808.)

§ 303. Active and inactive enlistments and transfers

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) Under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. Under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard. Under such regulations as the Secretary concerned may prescribe, a person enlisted in or transferred to the inactive Army National Guard or the inactive Air National Guard may be transferred to the active Army National Guard or the active Air National Guard, as the case may be.

(c) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601; Sept. 7, 1962, P.L. 87–649, § 14e(1), 76 Stat. 502; Dec. 12, 1980, P.L. 96–513, § 515(2), 94 Stat. 2937.)

§ 304. Enlistment oath

Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

"I do hereby acknowledge to have voluntarily enlisted this _____ day of _____, 19____, in the _____ National Guard of the State of _____ for a period of _____ year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law and regulations. So help me God."

The oath may be taken before any officer of the National Guard of the State or Territory, or of Puerto Rico or the District of Columbia, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Oct. 5, 1962, P.L. 87–751, § 2, 76 Stat. 748; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 305. Federal recognition of commissioned officers: persons eligible

(a) The following categories are eligible for Federal recognition as commissioned officers of the National Guard:

(1) Members of the National Guard.

(2) Members of the Army, Navy, Air Force, or Marine Corps.

(3) Former officers of the Army, Navy, Air Force, or Marine Corps.

(4) Former enlisted members of the Army, Navy, Air Force, or Marine Corps who were discharged honorably or under honorable conditions.

(5) Graduates of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy.

(6) Graduates of a school, college, university, or officer's training camp who received military instruction under the supervision of a commissioned officer of the Regular Army or the Regular Air Force, and whose fitness for appointment has been certified by that officer.

(7) Civilians who are specially qualified for duty in a technical or staff branch or organization.

(b) To be eligible for Federal recognition under this section with a view to serving as a nurse, a person must be a graduate of a hospital or university training school and a registered nurse.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Sept. 2, 1958, P.L. 85–861, § 2(5), 72 Stat. 1543; Nov. 8, 1967, P.L. 90–130, § 2(1), 81 Stat. 383.)

§ 307. Federal recognition of officers: examination; certificate of eligibility

(a) To be eligible for Federal recognition as an officer of the National Guard, a person must—

(1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard;

(2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved; and

(3) except as provided in subsections (d) and (e) of this section, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by section 312 of this title.

(b) The examination prescribed by subsection (a)—

(1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the

Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and

(2) may be held before original appointment or promotion.

(c) If such a board finds a person qualified, the Chief of the National Guard Bureau may issue to him a certificate of eligibility for Federal recognition for the office for which he was found qualified. If he is originally appointed or promoted within two years to that office, he is entitled to Federal recognition without further examination, except as to physical condition.

(d) Subject to subsection (a)(1) and (2) and to such physical examination as may be prescribed, Federal recognition shall be extended to each officer of the Army Reserve who has qualified for appointment as an officer of the Army National Guard in his reserve grade. Similarly, Federal recognition shall be extended to each officer of the Air Force Reserve who has qualified for appointment as an officer of the Air National Guard. Federal recognition extended under this subsection is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(e) Subject to subsection (a)(1) and (2), Federal recognition shall be extended to each officer of the Air Force Reserve who is appointed in a commissioned grade in the Air National Guard to fill a vacancy, if on the date on which he is appointed his reserve grade is the same as the grade in which he is appointed or his name is on a recommended list for promotion to that reserve grade.

(f) Federal recognition extended under subsection (d) or (e) is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Sept. 2, 1958, P.L. 85–861, § 2(6), 72 Stat. 1543; Oct. 13, 1972, P.L. 92–492, § 2(b), 86 Stat. 810; Dec. 16, 1980, P.L. 96–535, 94 Stat. 3165; Oct. 5, 1994, P.L. 103–337, § 1676(a)(2), 108 Stat. 3019.)

§ 308. Federal recognition of officers: temporary recognition

(a) The Secretary of the Army may authorize the extension of temporary Federal recognition as an officer of the Army National Guard to any person who has passed the examination prescribed in section 307(b) of this title, pending his appointment as a reserve officer of the Army. The Secretary of the Air Force may do likewise for a person who has passed that examination pending his appointment as a reserve officer of the Air Force. Temporary recognition so extended may be withdrawn at any time. If not sooner withdrawn or replaced by permanent recognition upon appointment as a reserve officer in the same grade, it terminates six months after its effective date.

(b) To be eligible for temporary Federal recognition under subsection (a), a person must take an oath that during the period of temporary recognition he will perform his Federal duties as if he had been appointed as a reserve officer of the Army or the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

§ 309. Federal recognition of National Guard officers: officers promoted to fill vacancies

Each officer of the National Guard who is promoted to fill a vacancy in a federally recognized unit of the National Guard, and who has been on the reserve active-status list or the active-duty list of the Army or the Air Force for at least one year and has completed the minimum years of service in grade specified in section 14303 of title 10, shall be examined for Federal recognition in the grade to which the officer is promoted.

(Added P.L. 85–861, § 2(7), Sept. 1958, 72 Stat. 1543, and amended P.L. 103–337, § 1630(1), Oct. 5, 1994, 108 Stat. 2963.)

§ 310. Federal recognition of National Guard officers: automatic recognition

(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade of first lieutenant, effective as of the date on which that officer has completed the service in the grade specified in section 14303(a)(1) of title 10 and has met such other requirements as prescribed by the Secretary concerned under section 14308(b) of that title, if the officer has remained in an active status since the officer was so recommended.

(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the Army National Guard to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade in which he is so appointed in the Army National Guard, if he has been recommended for promotion to the grade concerned under section 3366, 3367, 3370, or 3383 of title 10 and has remained in an active status since he was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the Army National Guard.

(Added P.L. 85–861, § 2(7), Sept. 1958, 72 Stat. 1544, and amended P.L. 103–337, § 1630(1), Oct. 5, 1994, 108 Stat. 2964.)

§ 312. Appointment oath

Each person who is appointed as an officer of the National Guard shall subscribe to the following oath:

> "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of _____, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____in the National Guard of the State of _____ upon which I am about to enter, so help me God."

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

§ 313. Appointments and enlistments: age limitations

(a) To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(b) To be eligible for appointment as an officer of the National Guard, a person must—

(1) be a citizen of the United States; and

(2) be at least 18 years of age and under 64.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Sept. 2, 1958, P.L. 85–861, § 2(9), 72 Stat. 1544; Nov. 8, 1967, P.L. 90–130, § 2(2), 81 Stat. 383.)

§ 314. Adjutants general

(a) There shall be an adjutant general in each State and Territory, Puerto Rico and the District of Columbia. He shall perform the duties prescribed by the laws of that jurisdiction.

(b) The President shall appoint the adjutant general of the District of Columbia and prescribe his grade and qualifications.

(c) The President may detail as adjutant general of the District of Columbia any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the District of Columbia National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.

(d) The adjutant general of each State and Territory, Puerto Rico and the District of Columbia, and officers of the National Guard, shall make such returns and reports as the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Sept. 2, 1958, P.L. 85–894, 72 Stat. 1713; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), (5), 102 Stat. 2059; Nov. 5, 1990, P.L. 101-510, § 1322(b), 104 Stat. 1672; Dec. 5, 1991, P.L. 102-190, § 553, 105 Stat. 1371.)

§ 315. Detail of regular members of Army and Air Force to duty with National Guard

(a) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State and Territory, Puerto Rico and the District of Columbia. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State and Territory, Puerto Rico and the District of Columbia. With the permission of the President, an officer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

§ 317. Command during joint exercises with Federal troops

When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

[§ 318 through 321. Repealed. P.L. 99–661, § 604(f)(2)(A), Nov. 14, 1986, 100 Stat. 3878]

§ 322. Discharge of enlisted members

(a) An enlisted member of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

(b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the corresponding certificate prescribed for members of the Regular Army or the Regular Air Force, as the case may be.

(c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

§ 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

(1) the Regular Army or the Army National Guard of the United States, or both, who out-rank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

(2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213(a), or 12214(a) of title 10, his Federal recognition is withdrawn.

(d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—

(1) federally recognized as an officer of the National Guard; and

(2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10;

shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 2, 1958, P.L. 85–861, §§ 2(11), 33(c)(2), 72 Stat. 1546, 1567; Oct. 5, 1994, P.L. 103–337, §§ 1630(2), 1676(a)(3), 108 Stat. 2964, 3019.)

§ 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 29, 1988, P.L. 100–456, § 1234(b)(6), 102 Stat. 2059.)

§ 325. Relief from National Guard duty when ordered to active duty

(a) Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(b) So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 29, 1988, P.L. 100–456, § 1234(b)(6), 102 Stat. 2059.)

§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

§ 327. General courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, general courts-martial may be convened by the President or by the governor of a State or Territory, Puerto Rico or by the commanding general of the National Guard of the District of Columbia.

(b) A general court-martial may sentence to—

(1) a fine of not more than $200;
(2) forfeiture of pay and allowances;
(3) a reprimand;
(4) dismissal or dishonorable discharge;
(5) reduction of a noncommissioned officer to the ranks; or
(6) any combination of these punishments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Sept. 29, 1988, P.L. 100–456, § 1234(b)(4), 102 Stat. 2059.)

§ 328. Special courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority.

(b) A special court-martial may not try a commissioned officer.

(c) A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than $100 for a single offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

§ 329. Summary courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(b) A summary court-martial may sentence to a fine of not more than $25 for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

§ 330. Confinement instead of fine

In the National Guard not in Federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

§ 331. Dismissal or dishonorable discharge

In the National Guard not in Federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor of the State or Territory, Puerto Rico, or whichever is concerned, or, in the case of the National Guard of the District of Columbia, by its commanding general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609; Sept. 29, 1988, P.L. 100–456, § 1234(b)(3), 102 Stat. 2059.)

§ 332. Compelling attendance of accused and witnesses

In the National Guard not in Federal service, the president of a court-martial or a summary court officer may—

(1) issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) issue subpenas duces tecum and other subpenas;

(3) enforce by attachment the attendance or witnesses and the production of books and papers; and

(4) sentence for refusal to be sworn or to answer, as provided in actions before civil courts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

§ 333. Execution of process and sentence

In the National Guard not in Federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the States concerned. In a State where no provision is made for executing those processes and sentences, and in the Territories, Puerto Rico and the District of Columbia, the process or sentence shall be executed by a United States marshal or deputy marshal, who shall make a return to the military officer issuing the process or the court imposing the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

CHAPTER 5—TRAINING

Sec.
501. Training generally.
502. Required drills and field exercises.
503. Participation in field exercises.
504. National Guard schools and small arms competitions.
505. Army and Air Force schools and field exercises.
506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard.
507. Instruction in firing; supply of ammunition.
508. Assistance for certain youth and charitable organizations.
509. National Guard Challenge Program of opportunities for civilian youth.

§ 501. Training generally

(a) The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.

(b) The training of the National Guard shall be conducted by the several States and Territories, Puerto Rico and the District of Columbia in conformity with this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than

once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(1) without his consent, but with the pay and allowances provided by law; or

(2) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 610; Oct. 3, 1964, P.L. 88–621, § 1(1), 78 Stat. 999; Dec. 1, 1967, P.L. 90–168, § 4, 81 Stat. 526; Nov. 17, 1971, P.L. 92–156, § 303(b), 85 Stat. 425; Nov. 30, 1993, P.L. 103–160, § 524(b), 107 Stat. 1657.)

§ 503. Participation in field exercises

(a)(1) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(2) Paragraph (1) includes authority to provide for participation of the National Guard in conjunction with the Army or the Air Force, or both, in joint exercises for instruction to prepare the National Guard for response to civil emergencies and disasters.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 610; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059; P.L. 104–106, § 517, Feb. 10, 1996, 110 Stat. 309.)

§ 504. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

(1) attend schools conducted by the Army or the Air Force, as appropriate;

(2) conduct or attend schools conducted by the National Guard; or

(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico or the District of Columbia may be held inside or outside its boundaries.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611; Oct. 3, 1964, P.L. 88–621, § 1(2), 78 Stat. 999; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory, Puerto Rico, or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army may authorize a limited number of members of its Army National Guard to—

(1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611; Sept. 29, 1988, P.L. 100–456, § 1234(b)(4), 102 Stat. 2059.)

§ 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

(a) The President shall assign for instruction of the National Guard such members of the Regular Army or the Regular Air Force as he considers necessary.

(b) The Secretary of the Army may detail members of the Regular Army to attend an encampment, maneuver, or other exercise, for field or coast-defense instruction of the Army National Guard. Similarly, the Secretary of the Air Force may detail members of the Regular Air Force to attend exercises for field or coast-defense instruction of the Air National Guard. Members so detailed shall

instruct the members of the National Guard at the exercise, as directed by the Secretary concerned, or as requested by the governor or commanding officer of the National Guard there assembled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611.)

§ 507. Instruction in firing; supply of ammunition

Ammunition for instruction in firing and for target practice may be furnished, in such amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, to units of the National Guard encamped at a post, camp, or air base. The instruction shall be under the direction of a commissioned officer selected for that purpose by the proper military commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

§ 508. Assistance for certain youth and charitable organizations

(a) AUTHORITY TO PROVIDE SERVICES.—Members and units of the National Guard may provide the services described in subsection (b) to an eligible organization in conjunction with training required under this chapter in any case in which—

(1) the provision of such services does not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit;

(2) the services to be provided are not commercially available, or any commercial entity that would otherwise provide such services has approved, in writing, the provision of such services by the National Guard;

(3) National Guard personnel will enhance their military skills as a result of providing such services; and

(4) the provision of the services will not result in a significant increase in the cost of the training.

(b) AUTHORIZED SERVICES.—The services authorized to be provided under subsection (a) are as follows:

(1) Ground transportation.

(2) Air transportation in support of Special Olympics.

(3) Administrative support services.

(4) Technical training services.

(5) Emergency medical assistance and services.

(6) Communications services.

(c) OTHER AUTHORIZED ASSISTANCE.—Facilities and equipment of the National Guard, including military property of the United States issued to the National Guard and General Services Administration vehicles leased to the National Guard, and General Services Administration vehicles leased to the Department of Defense, may be used in connection with providing services to any eligible organization under this section.

(d) ELIGIBLE ORGANIZATIONS.—The organizations eligible to receive services under this section are as follows:

(1) The Boy Scouts of America.

(2) The Girl Scouts of America.

(3) The Boys Clubs of America.

(4) The Girls Clubs of America.

(5) The Young Men's Christian Association.
(6) The Young Women's Christian Association.
(7) The Civil Air Patrol.
(8) The United States Olympic Committee.
(9) The Special Olympics.
(10) The Campfire Boys.
(11) The Campfire Girls.
(12) The 4–H Club.
(13) The Police Athletic League.
(14) Any other youth or charitable organization designated by the Secretary of Defense.

(Added P.L. 103–337, § 385, Oct. 5, 1994, 108 Stat. 2741.)

§ 509. National Guard Challenge Program of opportunities for civilian youth

(a) PROGRAM AUTHORITY AND PURPOSE.—The Secretary of Defense may use the National Guard to conduct a civilian youth opportunities program, to be known as the "National Guard Challenge Program", which shall consist of at least a 22-week residential program and a 12-month post-residential mentoring period. The National Guard Challenge Program shall seek to improve life skills and employment potential of participants by providing military-based training and supervised work experience, together with the core program components of assisting participants to receive a high school diploma or its equivalent, leadership development, promoting fellowship and community service, developing life coping skills and job skills, and improving physical fitness and health and hygiene.

(b) CONDUCT OF THE PROGRAM.—(1) The Secretary of Defense shall provide for the conduct of the National Guard Challenge Program in such States as the Secretary considers to be appropriate.

(2) The Secretary shall carry out the National Guard Challenge Program using—

(A) funds appropriated directly to the Secretary of Defense for the program, except that the amount of funds appropriated directly to the Secretary and expended for the program in a fiscal year may not exceed $62,500,000; and

(B) nondefense funds made available or transferred to the Secretary of Defense by other Federal agencies to support the program.

(3) Federal funds made available or transferred to the Secretary of Defense under paragraph (2)(B) by other Federal agencies to support the National Guard Challenge Program may be expended for the program in excess of the fiscal year limitation specified in paragraph (2)(A).

(c) PROGRAM AGREEMENTS.—(1) To carry out the National Guard Challenge Program in a State, the Secretary of Defense shall enter into an agreement with the Governor of the State or, in the case of the District of Columbia, with the commanding general of the District of Columbia National Guard, under which the Governor or the commanding general will establish, organize, and administer the National Guard Challenge Program in the State.

(2) The agreement may provide for the Secretary to provide funds to the State for civilian personnel costs attributable to the

use of civilian employees of the National Guard in the conduct of the National Guard Challenge Program.

(d) MATCHING FUNDS REQUIRED.—The amount of assistance provided under this section to a State program of the National Guard Challenge Program may not exceed—

(1) for fiscal year 1998, 75 percent of the costs of operating the State program during that year;

(2) for fiscal year 1999, 70 percent of the costs of operating the State program during that year;

(3) for fiscal year 2000, 65 percent of the costs of operating the State program during that year; and

(4) for fiscal year 2001 and each subsequent fiscal year, 60 percent of the costs of operating the State program during that year.

(e) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—A school dropout from secondary school shall be eligible to participate in the National Guard Challenge Program. The Secretary of Defense shall prescribe the standards and procedures for selecting participants from among school dropouts.

(f) AUTHORIZED BENEFITS FOR PARTICIPANTS.—(1) To the extent provided in an agreement entered into in accordance with subsection (c) and subject to the approval of the Secretary of Defense, a person selected for training in the National Guard Challenge Program may receive the following benefits in connection with that training:

(A) Allowances for travel expenses, personal expenses, and other expenses.

(B) Quarters.

(C) Subsistence.

(D) Transportation.

(E) Equipment.

(F) Clothing.

(G) Recreational services and supplies.

(H) Other services.

(I) Subject to paragraph (2), a temporary stipend upon the successful completion of the training, as characterized in accordance with procedures provided in the agreement.

(2) In the case of a person selected for training in the National Guard Challenge Program who afterwards becomes a member of the Civilian Community Corps under subtitle E of title I of the National and Community Service Act of 1990 (42 U.S.C. 12611 et seq.), the person may not receive a temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person may receive the temporary stipend after completing service in the Corps unless the person elects to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C. 12618).

(g) PROGRAM PERSONNEL.—(1) Personnel of the National Guard of a State in which the National Guard Challenge Program is conducted may serve on full-time National Guard duty for the purpose of providing command, administrative, training, or supporting services for the program. For the performance of those services, any such personnel may be ordered to duty under section 502(f) of this title for not longer than the period of the program.

(2) A Governor participating in the National Guard Challenge Program and the commanding general of the District of Columbia National Guard (if the District of Columbia National Guard is participating in the program) may procure by contract the temporary full time services of such civilian personnel as may be necessary to augment National Guard personnel in carrying out the National Guard Challenge Program in that State.

(3) Civilian employees of the National Guard performing services for the National Guard Challenge Program and contractor personnel performing such services may be required, when appropriate to achieve the purposes of the program, to be members of the National Guard and to wear the military uniform.

(h) EQUIPMENT AND FACILITIES.—(1) Equipment and facilities of the National Guard, including military property of the United States issued to the National Guard, may be used in carrying out the National Guard Challenge Program.

(2) Activities under the National Guard Challenge Program shall be considered noncombat activities of the National Guard for purposes of section 710 of this title.

(i) STATUS OF PARTICIPANTS.—(1) A person receiving training under the National Guard Challenge Program shall be considered an employee of the United States for the purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation of Federal employees for work injuries).

(B) Section 1346(b) and chapter 171 of title 28 and any other provision of law relating to the liability of the United States for tortious conduct of employees of the United States.

(2) In the application of the provisions of law referred to in paragraph (1)(A) to a person referred to in paragraph (1)—

(A) the person shall not be considered to be in the performance of duty while the person is not at the assigned location of training or other activity or duty authorized in accordance with a program agreement referred to in subsection (c), except when the person is traveling to or from that location or is on pass from that training or other activity or duty;

(B) the person's monthly rate of pay shall be deemed to be the minimum rate of pay provided for grade GS–2 of the General Schedule under section 5332 of title 5; and

(C) the entitlement of a person to receive compensation for a disability shall begin on the day following the date on which the person's participation in the National Guard Challenge Program is terminated.

(3) A person referred to in paragraph (1) may not be considered an employee of the United States for any purpose other than a purpose set forth in that paragraph.

(j) SUPPLEMENTAL RESOURCES.—To carry out the National Guard Challenge Program in a State, the Governor of the State or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard may supplement funds made available under the program out of other resources (including gifts) available to the Governor or the commanding general. The Governor or the commanding general may accept, use, and dispose

of gifts or donations of money, other property, or services for the National Guard Challenge Program.

(k) REPORT.—Within 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the design, conduct, and effectiveness of the National Guard Challenge Program during the preceding fiscal year. In preparing the report, the Secretary shall coordinate with the Governor of each State in which the National Guard Challenge Program is carried out and, if the program is carried out in the District of Columbia, with the commanding general of the District of Columbia National Guard.

(l) DEFINITIONS.—In this section:

(1) The term "State" includes the Commonwealth of Puerto Rico, the territories, and the District of Columbia.

(2) The term "school dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(m) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the National Guard Challenge Program. The regulations shall address at a minimum the following:

(1) The terms to be included in the program agreements required by subsection (c).

(2) The qualifications for persons to participate in the program, as required by subsection (e).

(3) The benefits authorized for program participants, as required by subsection (f).

(4) The status of National Guard personnel assigned to duty in support of the program under subsection (g).

(5) The conditions for the use of National Guard facilities and equipment to carry out the program, as required by subsection (h).

(6) The status of program participants, as described in subsection (i).

(7) The procedures to be used by the Secretary when communicating with States about the program.

(Added P.L. 105–85, § 1076(a), Nov. 18, 1997, 111 Stat. 1911, and amended P.L. 106–65, § 579(a), (b), Oct. 5, 1999, 113 Stat. 631; P.L. 106–398, § 1 (§ 577(a)–(c)), Oct. 30, 2000, 114 Stat. 1654A–140.)

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec.

701. Uniforms, arms, and equipment to be same as Army or Air Force.
702. Issue of supplies.
703. Purchases of supplies by States from Army or Air Force.
704. Accountability: relief from upon order to active duty.
705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force.
706. Return of arms and equipment upon relief from Federal service.
707. Use of public buildings for offices by instructors.
708. Property and fiscal officers.
709. Technicians: employment, use, status.
710. Accountability for property issued to the National Guard.
711. Disposition of obsolete or condemned property.
712. Disposition of proceeds of condemned stores issued to National Guard.
713. Official mail: free transmission.
714. Final settlement of accounts: deceased members.
715. Property loss; personal injury or death: activities under certain sections of this title.
716. Claims for overpayment of pay and allowances, and travel and transportation allowances.

§ 701. Uniforms, arms, and equipment to be same as Army or Air Force

So far as practicable, the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Army National Guard, and the same types of uniforms, arms, and equipment as are issued to the Air Force shall be issued to the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

§ 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State or Territory, Puerto Rico or the commanding general of the National Guard of the District of Columbia, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico or the District of Columbia is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico or the Dis-

trict of Columbia shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico or the District of Columbia, unless that jurisdiction makes provision, satisfactory to the Secretary concerned, for its protection and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), (4), 102 Stat. 2059.)

§ 703. Purchases of supplies by States from Army or Air Force

(a) Subject to the approval of the Secretary of the Army, any State or Territory, Puerto Rico or the District of Columbia may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State or Territory, Puerto Rico or the District of Columbia from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 704. Accountability: relief from upon order to active duty

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State or Territory, Puerto Rico or the District of Columbia, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force

Officers of the Army National Guard not in Federal service may buy articles of individual clothing and equipment from the Department of the Army, under such regulations as the Secretary of the Army may prescribe. On the same basis, officers of the Air National Guard not in Federal service may buy those items from the Department of the Air Force. Purchases under this section shall be for cash, at average current costs, including overhead, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

§ 706. Return of arms and equipment upon relief from Federal service

So far as practicable, whenever units, organizations, or members of the National Guard are returned to their National Guard status under section 325(b) of this title, arms and equipment that the Secretary concerned determines are sufficient to accomplish their peacetime mission shall be returned with them.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

§ 707. Use of public buildings for offices by instructors

Whenever practicable, instructors of the National Guard shall use State armories or other public buildings for offices.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614.)

§ 708. Property and fiscal officers

(a) The Governor of each State or Territory and Puerto Rico, and the commanding general of the National Guard of the District of Columbia, shall appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) Each property and fiscal officer shall—

(1) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

(2) make returns and reports concerning those funds and that property, as required by the Secretary concerned.

(c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State or Territory, Puerto Rico and the District of Columbia.

(e) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)–(d).

(f) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are pecuniarily responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; June 6, 1972, P.L. 92–310, § 207, 86 Stat. 203; July 30, 1977, P.L. 95–79, § 804(b), 91 Stat. 333; Dec. 12, 1980, P.L. 96–513, § 515(4), 94 Stat. 2937; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059; Nov. 29, 1989, P.L. 101-189, § 653(g), 103 Stat. 1463.)

§ 709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in—

(1) the administration and training of the National Guard; and

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

(1) Be a military technician (dual status) as defined in section 10216(a) of title 10.

(2) Be a member of the National Guard.

(3) Hold the military grade specified by the Secretary concerned for that position.

(4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.

(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; Sept. 13, 1961, P.L. 87–224, § 2, 75 Stat. 496; Aug. 13, 1968, P.L. 90–486, § 2(1), 82 Stat. 755; Aug. 13, 1971, P.L. 92–119, § 2, 85 Stat. 340; Dec. 12, 1980, P.L. 96–513, § 515(5)-(7), 94 Stat. 2937; Nov. 30, 1993, P.L. 103–160, §§ 523(a), 524(c), (d), 107 Stat. 1656, 1657; Oct. 5, 1994, P.L. 103–337, §§ 1070(b)(2), 1070(d)(5), 108 Stat. 2856, 2858; P.L. 104–106, § 1038(a), Feb. 10, 1996, 110 Stat. 432; Nov. 18, 1997, P.L. 105–85, § 522(c), 111 Stat. 107; P.L. 106–65, § 524, Oct. 5, 1999, 113 Stat. 599.)

§ 710. Accountability for property issued to the National Guard

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by

the United States to the National Guard that is lost, damaged, or destroyed may be charged (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or (2) to a State or Territory, Puerto Rico or the District of Columbia when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State or Territory, Puerto Rico or the District of Columbia shall be paid from its funds or from any other non-Federal funds.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934.

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State or Territory, Puerto Rico or the District of Columbia, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State or Territory, Puerto Rico or the District of Columbia, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f)(1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State or Territory, Puerto Rico or the District of Columbia, whichever is concerned, is relieved of accountability for that property.

(2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate—

(A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and

(B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 615; Sept. 2, 1958, P.L. 85–861, § 33(c)(3), 72 Stat. 1567; Aug. 8, 1980, P.L. 96–328, § 1(a), (b)(1), 94 Stat. 1027; Dec. 12, 1980, P.L. 96–513, § 515(8), 94

Stat. 2937; Sept. 13, 1982, P.L. 97–258, § 3(h)(2), 96 Stat. 1065; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059; Nov. 30, 1993, P.L. 103–160, § 524(e), 107 Stat. 1657.)

§ 711. Disposition of obsolete or condemned property

Each State and Territory, Puerto Rico and the District of Columbia shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 616; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 712. Disposition of proceeds of condemned stores issued to National Guard

The following shall be covered into the Treasury:

(1) The proceeds from sales of condemned stores issued to the National Guard of a State or Territory, Puerto Rico or the District of Columbia, and not charged against its allotment.

(2) The net proceeds from collections made from any person to reimburse the United States for the loss or destruction of, or damage to, property described in clause (1).

(3) Stoppage against members of the National Guard for the loss or destruction of, or damage to, property described in clause (1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 616; Sept. 29, 1988, P.L. 100–456, § 1234(b)(1), 102 Stat. 2059.)

§ 713. Official mail: free transmission

Units and headquarters of the National Guard, whether or not in Federal service, have the same privilege of free mailing of official matter as the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 617.)

§ 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, 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 with those prescribed for the armed forces under section 2771(b) of title 10.

(c) Under such regulations as the Secretary concerned may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be.

(Added P.L. 85–861, § 2(12), Sept. 2, 1958, 72 Stat. 1546, and amended P.L. 87–46, § 1, June 16, 1961, 75 Stat. 92; P.L. 104–316, § 202(q), Oct. 19, 1996, 110 Stat. 3844.)

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General [1] of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(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 title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, 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

[1] The functions of the Comptroller General under section 715 are transferred to the Director of the Office of Management and Budget effective June 30, 1996, pursuant to section 211 of the Legislative Branch Appropriations Act, 1996 (P.L. 104–53; 109 Stat. 535).

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 end 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 or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) 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.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

(Added P.L. 86–740, § 1(1), Sept. 13, 1960, 74 Stat. 878, and amended P.L. 87–649, § 8(b), Sept. 7, 1962, 76 Stat. 495; P.L. 90–486, § 2(3), Aug. 13, 1968, 82 Stat. 756; P.L. 90–525, § 6, Sept. 26, 1968, 82 Stat. 878; P.L. 91–312, § 3, July 8, 1970, 84 Stat. 412; P.L. 92–445, Sept. 29, 1972, 86 Stat. 745; P.L. 93–336, § 3, July 8, 1974, 88 Stat. 292; P.L. 98–564, § 4, Oct. 30, 1984, 98 Stat. 2919; P.L. 104–316, § 202(r), Oct. 19, 1996, 110 Stat. 3844.)

§ 716. Claims for overpayment of pay and allowances, and 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 National Guard, 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 respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added P.L. 92–453, § 2(1), Oct. 2, 1972, 86 Stat. 759, and amended P.L. 96–513, § 515(9), Dec. 12, 1980, 94 Stat. 2937; P.L. 99–224, § 3(a), Dec. 28, 1985, 99 Stat. 1742; P.L. 102-190, § 657(c), Dec. 5, 1991, 105 Stat. 1393; P.L. 104–316; P.L. 104–316, § 116, Oct. 19, 1996, 110 Stat. 3835.)

II. TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

[As amended through the end of the 106th Congress, December 31, 2000]

TABLE OF CHAPTERS OF TITLE 37 [1]

TITLE 37, UNITED STATES CODE

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

Chap.		Sec.
1.	Definitions	101
3.	Basic Pay	201
5.	Special and Incentive Pays	301
7.	Allowances	401
9.	Leave	501
10.	Payments to Missing Persons	551
11.	Payments to Mentally Incompetent Persons	601
13.	Allotments and Assignments of Pay	701
15.	Prohibitions and Penalties	801
17.	Miscellaneous Rights and Benefits	901
19.	Administration	1001

TABLE OF SECTIONS OF TITLE 37

CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

CHAPTER 3—BASIC PAY

Sec.
201. Pay grades: assignment to; general rules.
202. Pay grade: retired Coast Guard rear admirals (lower half).
203. Rates.
204. Entitlement.
205. Computation: service creditable.
206. Reserves; members of National Guard: inactive-duty training.
207. Band leaders.
209. Members of precommissioning programs.
210. Pay of senior enlisted members during terminal leave and while hospitalized.
211. Participation in Thrift Savings Plan.

[1] This table of chapters and the following table of sections are not part of title 37, as codified in the United States Code, but are included for the convenience of the reader.

CHAPTER 5—SPECIAL AND INCENTIVE PAYS

Sec.
301. Incentive pay: hazardous duty.
301a. Incentive pay: aviation career.
301b. Special pay: aviation career officers extending period of active duty.
301c. Incentive pay: submarine duty.
301d. Multiyear retention bonus: medical officers of the armed forces.
301e. Multiyear retention bonus: dental officers of the armed forces.
302. Special pay: medical officers of the armed forces.
302a. Special pay: optometrists.
302b. Special pay: dental officers of the armed forces.
302c. Special pay: psychologists and nonphysician health care providers.
302d. Special pay: accession bonus for registered nurses.
302e. Special pay: nurse anesthetists.
302f. Special pay: reserve, recalled, or retained health care officers.
302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties.
302h. Special pay: accession bonus for dental officers.
302i. Special pay: pharmacy officers.
302j. Special pay: accession bonus for pharmacy officers.
303. Special pay: veterinarians.
303a. Special pay: health professionals; general provisions.
303b. Waiver of board certification requirements.
304. Special pay: diving duty.
305. Special pay: hardship duty pay.
305a. Special pay: career sea pay.
306. Special pay: officers holding positions of unusual responsibility and of critical nature.
306a. Special pay: members assigned to international military headquarters.
307. Special pay: special duty assignment pay for enlisted members.
308. Special pay: reenlistment bonus.
[308a. Repealed.]
308b. Special pay: reenlistment bonus for members of the Selected Reserve.
308c. Special pay: bonus for enlistment in the Selected Reserve.
308d. Special pay: enlisted members of the Selected Reserve assigned to certain high priority units.
308e. Special pay: bonus for reserve affiliation agreement.
[308f. Repealed.]
308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve.
308h. Special pay: bonus for reenlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve.
308i. Special pay: prior service enlistment bonus.
309. Special pay: enlistment bonus.
310. Special pay: duty subject to hostile fire or imminent danger.
312. Special pay: nuclear-qualified officers extending period of active duty.
312a. Special pay: nuclear-trained and qualified enlistment members.
312b. Special pay: nuclear career accession bonus.
312c. Special pay: nuclear career annual incentive bonus.
314. Special pay or bonus: qualified enlisted members extending duty at designated locations overseas.
315. Special pay: engineering and scientific career continuation pay.
316. Special pay: foreign language proficiency pay.
316a. Waiver of certification requirement.
317. Special pay: officers in critical acquisition positions extending period of active duty.
318. Special pay: special warfare officers extending period of active duty.
319. Special pay: surface warfare officer continuation pay.
320. Incentive pay: career enlisted flyers.
321. Special pay: judge advocate continuation pay.
322. Special pay: 15-year career status bonus for members entering service on or after August 1, 1986.
323. Special pay: retention incentives for members qualified in a critical military skill.

CHAPTER 7—ALLOWANCES

Sec.
401. Definitions.
402. Basic allowance for subsistence.
402a. Supplemental subsistence allowance for low-income members with dependents.
403. Basic allowance for housing.
403b. Cost-of-living allowance in the continental United States.
404. Travel and transportation allowances: general.
404a. Travel and transportation allowances: temporary lodging expenses.
405. Travel and transportation allowances: per diem while on duty outside the United States or in Hawaii or Alaska.
405a. Travel and transportation allowances: departure allowances.
406. Travel and transportation allowances: dependents; baggage and household effects.
406a. Travel and transportation allowances: authorized for travel performed under orders that are canceled, revoked, or modified.
406b. Travel and transportation allowances: members of the uniformed services attached to a ship overhauling or inactivating.
406c. Travel and Transportation allowances: members assigned to a vessel under construction.
407. Travel and transportation allowances: dislocation allowance.
408. Travel and transportation allowances: travel within limits of duty station.
409. Travel and transportation allowances: house trailers and mobile homes.
410. Travel and transportation allowances: miscellaneous categories.
411. Travel and transportation allowances: administrative provisions.
411a. Travel and transportation allowances: travel performed in connection with convalescent leave.
411b. Travel and transportation allowances: travel performed in connection with leave between consecutive overseas tours.
411c. Travel and transportation allowances: travel performed in connection with rest and recuperative leave from certain stations in foreign countries.
411d. Travel and transportation allowances: transportation incident to personal emergencies for certain members and dependents.
411e. Travel and transportation allowances: transportation incident to certain emergencies for members performing temporary duty.
411f. Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies.
411g. Travel and transportation allowances: transportation incident to voluntary extensions of overseas tours of duty.
411h. Travel and transportation allowances: transportation of family members incident to the serious illness or injury of members.
411i. Travel and transportation allowances: parking expenses.
412. Appropriations for travel: may not be used for attendance at certain meetings.
413. Chairman and Vice Chairman of the Joint Chiefs of Staff.
414. Personal money allowance.
415. Uniform allowance: officers; initial allowance.
416. Uniform allowance: officers; additional allowances.
417. Uniform allowance: officers; general provisions.
418. Clothing allowance: enlisted members.
419. Civilian clothing allowance.
420. Allowances while participating in international sports.
421. Allowances: no increase while dependent is entitled to basic pay.
422. Cadets and midshipmen.
423. Validity of allowance payments based on purported marriages.
424. Band leaders.
425. United States Navy Band; United States Marine Corps Band: allowances while on concert tour.
427. Family separation allowance.
428. Allowance for recruiting expenses.
429. Travel and transportation allowances: minor dependent schooling.
430. Travel and transportation: dependent children of members stationed overseas.
431. Benefits for certain members assigned to the Defense Intelligence Agency.
432. Travel and transportation: members escorting certain dependents.
433. Allowance for muster duty.

434. Subsistence reimbursement relating to escorts of foreign arms control inspection teams.
435. Funeral honors duty: allowance.
436. Per diem allowance for lengthy or numerous deployments.

CHAPTER 9—LEAVE

Sec.
501. Payments for unused accrued leave.
502. Absences due to sickness, wounds, and certain other causes.
503. Absence without leave or over leave.
504. Cadets and midshipmen: chapter does not apply to.

CHAPTER 10—PAYMENTS TO MISSING PERSONS

Sec.
551. Definitions.
552. Pay and allowances: continuance while in a missing status; limitations.
553. Allotments: continuance, suspension, initiation, resumption, or increase while in a missing status; limitations.
554. Travel and transportation: dependents; household and personal effects; trailers; additional movements; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable.
555. Secretarial review.
556. Secretarial determinations.
557. Settlement of accounts.
558. Income tax deferment.
559. Benefits for members held as captives.

CHAPTER 11—PAYMENTS TO MENTALLY INCOMPETENT PERSONS

Sec.
601. Applicability.
602. Payments: designation of person to receive amounts due.
603. Regulations.
604. Determination of Secretary final.

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

Sec.
701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons.
703. Allotments: members of Coast Guard.
704. Allotments: officers of Public Health Service.
706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration.
707. Allotments: members of the National Guard.

CHAPTER 15—PROHIBITIONS AND PENALTIES

Sec.
802. Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs.
803. Commissioned officers of Army or Air Force: forfeiture of pay when dropped from rolls.

CHAPTER 17—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
901. Wartime pay of officer of armed force exercising command higher than his grade.
902. Pay of crews of wrecked or lost naval vessels.
903. Retired members recalled to active duty; former members.
905. Reserve officers of the Navy or Marine Corps not on the active-duty list: effective date of pay or allowances.
906. Extension of enlistment: effect on pay and allowances.
907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized.
908. Employment of reserves and retired members by foreign governments.

CHAPTER 19—ADMINISTRATION

Sec.
1001. Regulations relating to pay and allowances.
1002. Additional training or duty without pay: Reserves and members of National Guard.
1003. Assimilation of pay and allowances.
1004. Computation of pay and allowances for month or part of month.
1005. Army and Air Force: prompt payments required.
1006. Advance payments.
1007. Deductions from pay.
1008. Presidential recommendations concerning adjustments and changes in pay and allowances.
1009. Adjustments of monthly basic pay.
1010. Commissioned officers: promotions; effective date for pay and allowances.
1011. Mess operations: reimbursement of expenses.
1012. Disbursement and accounting: pay of enlisted members of the National Guard.
1013. Payment of compensation for victims of terrorism.
1014. Payment date for pay and allowances.
1015. Annual report on effects of recruitment and retention initiatives

Chap.		Sec.
1.	Definitions	101
3.	Basic Pay	201
5.	Special and Incentive Pays	301
7.	Allowances	401
9.	Leave	501
10.	Payments to Missing Persons	551
11.	Payments to Mentally Incompetent Persons	601
13.	Allotments and Assignments of Pay	701
15.	Prohibitions and Penalties	801
17.	Miscellaneous Rights and Benefits	901
19.	Administration	1001

CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§ 101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

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

(2) The term "possessions" includes Guam, American Samoa, and the guano islands.

(3) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service;

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

(5) 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 Navy;

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

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

(E) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(F) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

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

(7) The term "Army National Guard" means that part of the organized militia of the several States, Puerto Rico, Guam, the Canal Zone, the Virgin Islands, 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.

(8) 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.

(9) The term "Air National Guard" means that part of the organized military of the several States, Puerto Rico, Guam, the Canal Zone, the Virgin Islands, 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.

(10) 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.

(11) The term "officer" means commissioned or warrant officer.

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

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

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

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

(16) The term "rank" means the order of precedence among members of the uniformed services.

(17) The term "rating" means the name (such as "boatswain's mate") prescribed for members of a uniformed service in an occupational field. "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).

(18) The term "active duty" means full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.

(19) 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.

(20) The term "active service" means service on active duty.

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

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

(A) duty prescribed for members of a reserve component by the Secretary concerned under section 206 of this title or any other law; and

(B) special additional duties authorized for members of a reserve component 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;

and includes those duties when performed by members of a reserve component in their status as members of the National Guard, but does not include work or study in connection with a correspondence course of a uniformed service.

(23) The term "member" means a person appointed or enlisted in, or conscripted into, a uniformed service.

(24) The term "reserve component" means—

(A) the Army National Guard of the United States;

(B) the Army Reserve;

(C) the Naval Reserve;

(D) the Marine Corps Reserve;

(E) the Air National Guard of the United States;

(F) the Air Force Reserve;

(G) the Coast Guard Reserve; or

(H) the Reserve Corps of the Public Health Service.

(25) The term "regular compensation" or "regular military compensation (RMC)" means the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for housing, basic allowance for subsistence, and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax.

(26) The term "contingency operation" has the meaning given that term in section 101 of title 10.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 451; P.L. 89–718, § 49(a)(1), Nov. 2, 1966, 80 Stat. 1121; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 92–492, § 3, Oct. 13, 1972, 86 Stat. 810; P.L. 93–419, § 1, Sept. 19, 1974, 88 Stat. 1152; P.L. 96–513, §§ 506(1), 516(1), Dec. 12, 1980, 94 Stat. 2918, 2937; P.L. 96–579, § 11, Dec. 23, 1980, 94 Stat. 3368; P.L. 96–600, § 3(b), Dec. 24, 1980, 94 Stat. 3494; P.L. 98–525, § 414(c), Oct. 19, 1984, 98 Stat. 2520; P.L. 100–26, § 8(e)(1), Apr. 21, 1987, 101 Stat. 286; P.L. 100–456, § 1233(f)(2), Sept. 29, 1988, 102 Stat. 2058; P.L. 102–190, § 631(b), Dec. 5, 1991, 105 Stat. 1380; P.L. 102–484, § 1051(b)(2), Oct. 23, 1992, 106 Stat. 2499; P.L. 103–160, § 1182(c)(1), Nov. 30, 1993, 107 Stat. 1772; P.L. 105–85, § 603(d)(1)(A), Nov. 18, 1997, 111 Stat. 1782; P.L. 105–261, § 651, Oct. 16, 1998, 112 Stat. 2051.)

CHAPTER 3—BASIC PAY

Sec.

201. Pay grades: assignment to; general rules.
202. Pay grade: retired Coast Guard rear admirals (lower half).
203. Rates.
204. Entitlement.
205. Computation: service creditable.
206. Reserves; members of National Guard: inactive-duty training.
207. Band leaders.
209. Members of precommissioning programs.
210. Pay of senior enlisted members during terminal leave and while hospitalized.
211. Participation in Thrift Savings Plan.

§ 201. Pay grades: assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following grades:

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and National Oceanic and Atmospheric Administration	Public Health Service
O–10	General	Admiral	Assistant Secretary for Health.
O–9	Lieutenant general.	Vice admiral	Surgeon General.
O–8	Major general	Rear admiral	Deputy Surgeon General. Assistant Surgeon General having rank of major general.
O–7	Brigadier general	Rear admiral (lower half).	Assistant Surgeon General having rank of brigadier general.
O–6	Colonel	Captain	Director grade.
O–5	Lieutenant colonel.	Commander	Senior grade.
O–4	Major	Lieutenant Commander.	Full grade.
O–3	Captain	Lieutenant	Senior assistant grade.
O–2	1st lieutenant	Lieutenant (junior grade).	Assistant grade.
O–1	2d lieutenant	Ensign	Junior assistant grade.

(b) For the purpose of computing their basic pay, warrant officers of the armed forces are assigned, by the warrant officer grade in which serving, to the following pay grades:

Pay Grade:	Warrant Officer Grade:
W–5	Chief Warrant Officer, W–5.
W–4	Chief Warrant Officer, W–4.
W–3	Chief Warrant Officer, W–3.
W–2	Chief Warrant Officer, W–2.
W–1	Warrant Officer, W–1.

(c) Unless entitled to the basic pay of a higher pay grade, an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the lowest rate prescribed for pay grade E–4.

(d) Unless he is entitled to the basic pay of a higher pay grade, an aviation pilot of the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve is entitled to monthly basic pay at the rate prescribed for pay grade E–5.

(e) Except as provided by subsections (c) and (d), enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title an enlisted member may not be placed in pay grade E–8 or E–9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 453; P.L. 88–132, § 3(a), Oct. 2, 1963, 77 Stat. 212; P.L. 89–718, § 49(a)(1), Nov. 2, 1966, 80 Stat. 1121; P.L. 91–278, § 3(1), June 12, 1970, 84 Stat. 306; P.L. 95–79, § 302(a)(1), July 30, 1977, 91 Stat. 326; P.L. 96–76, § 313(a), Sept. 29, 1979, 93 Stat. 586; P.L. 96–513, §§ 506(3), 516(2), Dec. 12, 1980, 94 Stat. 2918, 2937; P.L. 97–86, § 405(c), Dec. 1, 1981, 95 Stat. 1106; P.L. 98–94, § 932(d), Sept. 24, 1983, 97 Stat. 650; P.L. 98–557, § 25(b)(1), Oct. 30, 1984, 98 Stat. 2872; P.L. 99–145, § 514(d)(1), Nov. 8, 1985, 99 Stat. 629; P.L. 101–502, § 5(k), Nov. 3, 1990, 104 Stat. 1289, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 605 and 1111(b), Dec. 5, 1991, 105 Stat. 1374 and 1491.)

§ 202. Pay grade: retired Coast Guard rear admirals (lower half)

An officer of the Coast Guard holding a permanent appointment in the grade of rear admiral (lower half) on the retired list, and who in time of war or national emergency has served satisfactorily on active duty for two years in that grade or in a higher grade, is entitled when on active duty to the basic pay of a rear admiral.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 454; P.L. 89–718, § 50, Nov. 2, 1966, 80 Stat. 1121; P.L. 90–130, § 3(1), Nov. 8, 1967, 81 Stat. 383; P.L. 90–179, § 7, Dec. 8, 1967, 81 Stat. 548; P.L. 90–623, § 3(2), Oct. 22, 1968, 82 Stat. 1314; P.L. 92–451, § 2, Oct. 2, 1972, 86 Stat. 757; P.L. 96–342, § 1004(a), Sept. 8, 1980, 94 Stat. 1120; P.L. 96–513, § 401, Dec. 12, 1980, 94 Stat. 2904; P.L. 97–417, § 3(a), Jan. 4, 1983, 96 Stat. 2087; P.L. 98–557, § 25(b)(2)(A), Oct. 30, 1984, 98 Stat. 2872; P.L. 98–145, § 514(d)(2) (A), (B), Nov. 8, 1985, 99 Stat. 629.)

§ 203. Rates

(a)(1) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

(2) Notwithstanding the rates of basic pay in effect at any time as provided by law, the rates of basic pay payable for commissioned officers in pay grades O–7 through O–10 may not exceed the monthly equivalent of the rate of pay for level III of the Executive Schedule, and the rates of basic pay payable for all other officers and for enlisted members may not exceed the monthly equivalent of the rate of pay for level V of the Executive Schedule.

(b) While serving as a permanent professor at the United States Military Academy or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of $250 a month. This additional pay may not be used in the computation of retired pay.

(c) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the rate of $600.00.[1]

(d) The basic pay of a commissioned officer who is in pay grade O–1, O–2, or O–3 and who is credited with a total of over four years' active service as warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

(e)(1) A student at the United States Military Academy Preparatory School, the United States Naval Academy Preparatory School, or the United States Air Force Academy Preparatory School who was selected to attend the preparatory school from civilian life is entitled to monthly student pay at the same rate as provided for cadets and midshipmen under subsection (c).

(2) A student at a preparatory school referred to in paragraph (1) who, at the time of the student's selection to attend the preparatory school, was an enlisted member of the uniformed services on active duty for a period of more than 30 days shall continue to receive monthly basic pay at the rate prescribed for the student's pay grade and years of service as an enlisted member.

(3) The monthly student pay of a student described in paragraph (1) shall be treated for purposes of the accrual charge for the Department of Defense Military Retirement Fund established under section 1461 of title 10 in the same manner as monthly cadet pay or midshipman pay under subsection (c).

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 456; P.L. 88–132, § 2, Oct. 2, 1963, 77 Stat. 210; P.L. 88–422, § 1, Aug. 12, 1964, 78 Stat. 395; P.L. 89–132, § 1, Aug. 21, 1965, 79 Stat. 545; P.L. 89–501, § 301, July 13, 1966, 80 Stat. 276; P.L. 90–207, § 1(1), Dec. 16, 1967, 81 Stat. 649; P.L. 91–278, § 3(2), June 12, 1970, 84 Stat. 306; P.L. 92–129, § 201, Sept. 28, 1971, 85 Stat. 355; P.L. 92–455, § 3, Oct. 2, 1972, 86 Stat. 761; P.L. 93–419, § 2, Sept. 19, 1974, 88 Stat. 1152; P.L. 95–79, § 302(a)(2), July 30, 1977, 91 Stat. 326; P.L. 96–343, § 6(b), Sept. 8, 1980, 94 Stat. 1127; P.L. 97–60, § 102(a), Oct. 14, 1981, 95 Stat. 992; P.L. 98–94, § 902(a), Sept. 24, 1983, 97 Stat. 635; P.L. 99–145, § 1303(b)(1), Nov. 8, 1985, 99 Stat. 740; P.L. 99–661, § 601(c), Nov. 14, 1986, 100 Stat. 3874; P.L. 100–180, § 601(c), formerly § 601(d), Dec. 4, 1987, 101 Stat. 1092; P.L. 100–202, § 110(b), Dec. 22, 1987, 101 Stat. 1329–436; P.L. 100–456, § 601(d), Sept. 29, 1988, 102 Stat. 1976; P.L. 101–189, § 601(c), Nov. 29, 1989, 103 Stat. 1445; P.L. 103–160, § 603(a), Nov. 30, 1993, 107 Stat. 1678; P.L. 103–337, § 601(c), Oct. 5, 1994, 108 Stat. 2779; P.L. 104–201, § 602, Sept. 23, 1996, 110 Stat. 2540; P.L. 105–261, § 602(a), Oct. 16, 1998, 112 Stat. 2037; P.L. 106–65, § 601(d), Oct. 5, 1999, 113 Stat. 648; P.L. 106–398, § 1 (§ 612(a)), Oct. 30, 2000, 114 Stat. 1654A–150.)

§ 204. Entitlement

(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air

[1] Effective October 1, 2001, section 612(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–150), provides:

(a) PAY RATES FOR CADETS AND MIDSHIPMEN.—Section 203(c) of title 37, United States Code, is amended by striking "at the rate of $600.00." and inserting "at the monthly rate equal to 35 percent of the basic pay of a commissioned officer in the pay grade O–1 with less than two years of service.".

Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 10302, 10305, 10502, or 12402 of title 10, or section 503, 504, 505, or 506 of title 32. [1]

(b) For the purposes of subsection (a), under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty.

(c) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date when he appears at the place of company rendezvous. However, this subsection does not authorize any expenditure before arriving at the place of rendezvous that is not authorized by law to be paid after arrival at that place.

(d) Full-time training, training duty with pay, or other full-time duty performed 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, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his return home incident to that release may be paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade O–1 beginning upon the date of his graduation.

(g)(1) A member of a reserve component of a uniformed service is entitled, to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing 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

[1] The exercises or duties referenced by the sections referred to in section 204(a)(2) include the following: service on reserve forces policy boards and committees (10 U.S.C. 10302, 10305); duty with the National Guard Bureau (10 U.S.C. 10502); assignment to a position in Federal service (10 U.S.C. 12402); participation in field exercises (32 U.S. 503); participation in National Guard schools and small arms competitions (32 U.S.C. 504); attendance at Army and Air Force schools and field exercises (32 U.S.C. 505); and assignment of members of the Regular Army of Regular Air Force for instruction of National Guard (32 U.S.C. 506).

an educational institution under the sponsorship of an armed force or the Public Health Service);

(C) while traveling directly to or from such duty or training;

(D) in 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; or

(E) in line of duty while—

(i) serving on funeral honors duty under section 12503 of title 10 or section 115 of title 32;

(ii) traveling to or from the place at which the duty was to be performed; or

(iii) remaining 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.

(2) In the case of a member who receives earned income from nonmilitary employment or self-employment performd in any month in which the member is otherwise entitled to pay and allowances under paragraph (1), the total pay and allowances shall be reduced by the amount of such income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(h)(1) A member of a reserve component of a uniformed service who is physically able to perform his military duties, is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of earned income from nonmilitary employment or self-employment as a result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing 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);

(C) while traveling directly to or from that duty or training;

(D) in 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; or

(E) in line of duty while—

(i) serving on funeral honors duty under section 12503 of title 10 or section 115 of title 32;

(ii) traveling to or from the place at which the duty was to be performed; or

(iii) remaining 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.

(2) The monthly entitlement may not exceed the member's demonstrated loss of earned income from nonmilitary or self-employment. In calculating such loss of income, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(i)(1) The total amount of pay and allowances paid under subsections (g) and (h) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

(2) Pay and allowances may be paid under subsection (g) or (h) for a period of more than six months. The Secretary concerned may extend such periods in any case if the Secretary determines that it is in the interests of fairness and equity to do so.

(3) A member is not entitled to benefits under subsection (g) or (h) if the injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member.

(4) Regulations with respect to procedures for paying pay and allowances under subsections (g) and (h) shall be prescribed—

(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(j) A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 457; P.L. 96–513, § 506(4), Dec. 12, 1980, 94 Stat. 2919; P.L. 98–94, § 1012(b), Sept. 24, 1983, 97 Stat. 665; P.L. 99–433, § 531(b), Oct. 1, 1986, 100 Stat. 1063; P.L. 99–661, § 604(b), Nov. 14, 1986, 100 Stat. 3875; P.L. 100–456, § 631 (a), (b), Sept. 29, 1988, 102 Stat. 1984, 1985, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–337, § 1676(b)(1), Oct. 5, 1994, 108 Stat. 3019; P.L. 104–106, § 702(c), Feb. 10, 1996, 110 Stat. 371; P.L. 105–85, § 513(f), Nov. 18, 1997, 111 Stat. 1732; P.L. 106–398, § 1 (§ 665(a)), Oct. 30, 2000, 114 Stat. 1654A–168.)

§ 205. Computation: service creditable

(a) Subject to subsections (b) and (c), for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;
(E) the National Guard Reserve;
(F) a reserve component of a uniformed service;
(G) the Naval Militia;
(H) the National Naval Volunteers;
(I) the Naval Reserve Force;
(J) the Army without specification of component;
(K) the Air Force without specification of component;
(L) the Marine Corps Reserve Force;
(M) the Philippine Scouts; or
(N) the Philippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922 all service that was then counted in computed longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Department of Veterans Affairs, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10,[1] a period of service described in clauses (2) through (7) that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5), periods during which a member was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration includes periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration or the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a).

(c) The periods of service authorized to be counted under subsection (a) shall, under regulations prescribed by the Secretary con-

[1] In section 205(a), the referenced provisions in title 10 relate to the computation of retired pay of certain individuals retired for disability.

cerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing basic pay a period of service after October 13, 1964, that the officer performed concurrently as a member of the Senior Reserve Officers' Training Corps, except for service that the officer performed on or after August 1, 1979, other than for training as an enlisted member of the Selected Reserve may be so counted.

(e)(1) Notwithstanding subsection (a), a period of service described in paragraph (2) of a member who enlists in a reserve component may not be counted under this section.

(2) Paragraph (1) applies to the following service:

(A) Service performed while a member of a reserve component under an enlistment under section 12103(b) or 12103(d) of title 10 before the member begins service on active duty under such section (including a period of active duty for training) unless the member performs inactive-duty training before beginning service on active duty or active duty for training;

(B) Service performed while a member of a reserve component under an enlistment under section 513 of title 10 (other than a period of active duty to which the member is ordered under chapter 1209 of title 10 or another provison of law).

(f) Notwithstanding subsection (a), the periods of service of a commissioned officer appointed under section 12203 of title 10 after receiving financial assistance under section 16401 of such title that are counted under this section may not include a period of service after January 1, 2000, that the officer performed concurrently as an enlisted member of the Marine Corps Platoon Leaders Class program and the Marine Corps Reserve, except that service after that date that the officer performed before commissioning (concurrently with the period of service as a member of the Marine Corps Platoon Leaders Class program) as an enlisted member on active duty or as a member of the Selected Reserve may be so counted.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 458; P.L. 88–647, § 202(1), Oct. 13, 1964, 78 Stat. 1070; P.L. 89–718, § 49(a)(1), (b), Nov. 2, 1966, 80 Stat. 1121; P.L. 90–623, § 3(3), Oct. 22, 1968, 82 Stat. 1314; P.L. 93–545, § 2, Dec. 26, 1974, 88 Stat. 1741; P.L. 96–342, § 813(b)(3)(D), Sept. 8, 1980, 94 Stat. 1104, P.L. 96–513, § 402, § 516(3), Dec. 12, 1980, 94 Stat. 2904, 2937; P.L. 98–525, § 607(a), Oct. 19, 1984, 98 Stat. 2538; P.L 101–189, § 501(c), Nov. 29, 1989, 103 Stat. 1435, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 517(b), Oct. 23, 1992, 106 Stat. 2407; P.L. 103–35, § 204(a)(1), May 31, 1993, 107 Stat. 102; P.L. 103–337, § 1676(b)(2), Oct. 5, 1994, 108 Stat. 3019; P.L. 104–201, § 507(b), Sept. 23, 1996, 110 Stat. 2512; P.L. 105–85, § 1073(b), Nov. 18, 1997, 111 Stat. 1904; P.L. 106–65, § 551(c), Oct. 5, 1999, 113 Stat. 614; P.L. 106–398, § 1 (§ 533(e)), Oct. 30, 2000, 114 Stat. 1654A–111.)

§ 206. Reserves; members of National Guard: inactive-duty training

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty; or

(ii) inactive-duty training;

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member); or

(C) in line of duty while while 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.

(b) The regulations prescribed under subsection (a) for each uniformed service, the National Guard, and each of the classes of organization of the reserve components within each uniformed service, may be different. The Secretary concerned shall, for the National Guard and each of the classes of organization within each uniformed service, prescribe—

(1) minimum standards that must be met before an assembly for drill or other equivalent period of training, instruction, duty, or appropriate duties may be credited for pay purposes, and those standards may require the presence for duty of officers and enlisted members in numbers equal to or more than a minimum number or percentage of the unit strength for a specified period of time with participation in a prescribed kind of training;

(2) the maximum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties, that may be counted for pay purposes in each fiscal year or in lesser periods of time; and

(3) The minimum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties that must be completed in stated periods of time before the members of units or organizations can qualify for pay.

(c) A person enlisted in the inactive National Guard is not entitled to pay under this section.

(d) This section does not authorize compensation for work or study performed by a member of a reserve component in connection with correspondence courses of an armed force.

(e) A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the

member's regular period of instruction or regular period of appropriate duty during that fiscal year.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 460; P.L. 98–525, § 1402(a), Oct. 19, 1984, 98 Stat. 2620; P.L. 99–661, § 604(c), Nov. 14, 1986, 100 Stat. 3876; P.L. 100–456, § 631(c), Sept. 29, 1988, 102 Stat. 1985; P.L. 104–106, § 702(d), Feb. 10, 1996, 110 Stat. 371; P.L. 105–85, §513(g), Nov. 18, 1997, 111 Stat. 1732.)

§ 207. Band leaders

(a) The leader of the Army Band is entitled to the basic pay of a captain in the Army.

(b) The leader of the United States Navy Band is entitled to the basic pay of a lieutenant in the Navy.

(c) A member of the Marine Corps who is appointed as director of assistant director of the United States Marine Band under section 6222 of title 10 is entitled, while serving thereunder, only to the basic pay of an officer in the grade in which he is serving. However, his basic pay may not be less than that to which he was entitled at the time of his appointment under that section.

(d) The leader of the Naval Academy Band is entitled to the basic pay of the grade the Secretary of the Navy prescribes. The second leader is entitled to the basic pay of a warrant officer, W–1.

(e) The director of the Coast Guard Band is entitled to the basic pay of an officer in the grade in which he is serving. However, his basic pay may not be less than that to which he was entitled at the time of his appointment as director.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 460; P.L. 89–189, § 2, Sept. 17, 1965, 79 Stat. 820; P.L. 95–551, § 3(b)(1), Oct. 30, 1978, 92 Stat. 2069.)

§ 209. Members of precommissioning programs

(a)[1] SENIOR ROTC MEMBERS IN ADVANCED TRAINING.—Except when on active duty, a member of the Senior Reserve Officers' Training Corps who is selected for advanced training under section 2104 of title 10 is entitled to a subsistence allowance of $200 a month beginning on the day he starts advanced training and ending upon the completion of his instruction under that section, but in no event shall any member receive such pay for more than 30 months. Subsistence allowance under this section may not be considered financial assistance requiring additional service within the meaning of the third sentence of section 6(d)(1) of the Military Selective Act (50 U.S.C App. 456(d)(1)).

(b) SENIOR ROTC MEMBERS APPOINTED IN RESERVES.—Except when on active duty, a cadet or midshipman appointed under section 2107 of title 10 is entitled to a monthly subsistence allowance at a rate prescribed under subsection (a). A member enrolled in the

[1] Effective October 1, 2001, section 612(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by P.L. 106–398; 114 Stat. 1654A–150), provides:

(b) SUBSISTENCE ALLOWANCE RATES.—Subsection (a) of section 209 of such title is amended—
(1) by inserting "(1)" before "Except";
(2) by striking "subsistence allowance of $200 a month" and inserting "monthly subsistence allowance at a rate prescribed under paragraph (2)";
(3) by striking "Subsistence" and inserting the following:
"(3) A subsistence"; and
(4) by inserting after the first sentence the following:
"(2) The Secretary of Defense shall prescribe by regulation the monthly rates for subsistence allowances provided under this section. The rate may not be less than $250 per month, but may not exceed $674 per month.".

first two years of a four-year program is entitled to receive subsistence for a maximum of twenty months. A member enrolled in the advanced course is entitled to subsistence as prescribed for a member enrolled under section 2104 of title 10 as prescribed in subsection (a).

(c) PAY WHILE ATTENDING TRAINING OR PRACTICE CRUISE.—Each cadet or midshipman in the Senior Reserve Officers' Training Corps, while he is attending training or practice cruises under chapter 103 of title 10 if the training or cruise is of at least four weeks duration and must be completed before the cadet or midshipman is commissioned, and each applicant for membership in the Senior Reserve Officers' Training Corps, while he is attending field training or practice cruises to satisfy the requirements of section 2104(b)(6)(B) of title 10 for admission to advanced training, is entitled, while so attending, to pay at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies under section 203(c) of this title.

(d) MEMBERS OF MARINE CORPS OFFICER CANDIDATE PROGRAM.—Except when serving on active duty, a member who is enrolled in a Marine Corps officer candidate program which requires a baccalaureate degree as a prerequisite to being commissioned as an officer and who is not enrolled in a program established under chapter 103 of title 10 or an academy established under chapter 403, 603, or 903 of title 10 may be paid a subsistence allowance at a monthly rate prescribed under subsection (a) for a member of the Senior Reserve Officers' Training Corps who is selected for advanced training under section 2104 of title 10.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 461; P.L. 88–647, § 202(2), Oct. 13, 1964, 78 Stat. 1070; P.L. 89–51, § 3, June 28, 1965, 79 Stat. 173; P.L. 89–718, § 51, Nov. 2, 1966, 80 Stat. 1121; P.L. 92–171, § 1, Nov. 24, 1971, 85 Stat. 490; P.L. 95–79, § 302(a)(3) (A), (B), July 30, 1977, 91 Stat. 326; P.L. 96–342, § 811(a), Sept. 8, 1980, 94 Stat. 1098; P.L. 96–513, § 516(4), Dec. 12, 1980, 94 Stat. 2938; P.L. 96–579, § 8, Dec. 23, 1980, 94 Stat. 3368; P.L. 98–94, § 1003(a)(4), Sept. 24, 1983, 97 Stat. 656; P.L. 100–456, § 633(d), Sept. 29, 1988, 102 Stat. 1987; P.L. 101–189, § 653(d), Nov. 29, 1989, 103 Stat. 1462; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–337, § 603(a), Oct. 5, 1994, 108 Stat. 2782; P.L. 106–65, § 546(a), Oct. 5, 1999, 113 Stat. 608; P.L. 106–398, § 1 (§ 612(b),(c)), Oct. 30, 2000, 114 Stat. 1654A–150.)

§ 210. Pay of senior enlisted members during terminal leave and while hospitalized

(a) A noncommissioned officer of an armed force who, immediately following the completion of service as the senior enlisted member of that armed force, is placed on terminal leave pending retirement shall be entitled, for not more than 60 days while in such status, to the rate of basic pay authorized for the senior enlisted member of that armed force.

(b) A noncommissioned officer of an armed force who is hospitalized and who, during or immediately before such hospitalization, completed service as the senior enlisted member of that armed force, shall continue to be entitled, for not more than 180 days while so hospitalized, to the rate of basic pay authorized for the senior enlisted member of that armed force.

(c) In this section, the term "senior enlisted member" means the following:

(1) The Sergeant Major of the Army.
(2) The Master Chief Petty Officer of the Navy.
(3) The Chief Master Sergeant of the Air Force.

(4) The Sergeant Major of the Marine Corps.

(5) The Master Chief Petty Officer of the Coast Guard.

(Added P.L. 102–190, § 606, Dec. 5, 1991, 105 Stat. 1375, and amended P.L. 104–201, § 603(a), (b)(1), Sept. 23, 1996, 110 Stat. 2540.)

§ 211. Participation in Thrift Savings Plan [1]

(a) DEFINITION.—In this section, the term 'member' means—

(1) a member of the uniformed services serving on active duty; and

(2) a member of the Ready Reserve in any pay status.

(b) AUTHORITY.—Any member may participate in the Thrift Savings Plan in accordance with section 8440e of title 5.

(c) RULE OF CONSTRUCTION REGARDING SEPARATION.—For purposes of subchapters III and VII of chapter 84 of title 5, each of the following actions shall, in the case of a member participating in the Thrift Savings Plan in accordance with section 8440e of such title, be considered a separation from Government employment:

(1) Release of the member from active duty, not followed, before the end of the 31-day period beginning on the day following the effective date of the release, by—

(A) a resumption of active duty; or

(B) an appointment to a position covered by chapter 83 or 84 of title 5 or an equivalent retirement system, as identified by the Executive Director (appointed by the Federal Retirement Thrift Investment Board) in regulations.

(2) Transfer of the member to inactive status, or to a retired list pursuant to any provision of title 10.

(d) AGENCY CONTRIBUTIONS FOR RETENTION IN CRITICAL SPECIALTIES.—(1) The Secretary concerned may enter into an agreement with a member to make contributions to the Thrift Savings Fund for the benefit of the member if the member—

(A) is in a specialty designated by the Secretary as critical to meet requirements (whether such specialty is designated as critical to meet wartime or peacetime requirements); and

---

[1] Section 633 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 673; 5 U.S.C. 8440 note), as amended by section 661(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–167; October 30, 2000) provides as follows:

SEC. 633. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall take effect 180 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

(b) POSTPONEMENT AUTHORITY.—(1) The Secretary of Defense may postpone by up to 180 days after the date that would otherwise apply under subsection (a)—

(A) the date as of which the amendments made by this subtitle shall take effect; or

(B) the date as of which section 211(a)(2) of title 37, United States Code (as added by this subtitle) shall take effect.

(2) Postponement authority under this subsection may be exercised only to the extent that the failure to do so would prevent the Federal Retirement Thrift Investment Board from being able to provide timely and accurate services to investors or would place an excessive burden on the administrative capacity of the Board to accommodate participants in the Thrift Savings Plan, as determined by the Secretary of Defense after consultation with the Executive Director (appointed by the Board).

(3) Paragraph (1) includes the authority to postpone the effective date of the amendments made by this subtitle (apart from section 211(a)(2) of title 37, United States Code), and the effective date of such section 211(a)(2), by different lengths of time.

(4) The Secretary shall notify the congressional defense committees, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of any determination made under this subsection.

(B) commits in such agreement to continue to serve on active duty in that specialty for a period of 6 years.

(2) Under any agreement entered into with a member under paragraph (1), the Secretary shall make contributions to the Fund for the benefit of the member for each pay period of the 6-year period of the agreement for which the member makes a contribution to the Fund under section 8440e of title 5 (other than under subsection (d)(2) thereof). Paragraph (2) of section 8432(c) of title 5 applies to the Secretary's obligation to make contributions under this paragraph, except that the reference in such paragraph (2) to contributions under paragraph (1) of such section 8432(c) does not apply.

(Added P.L. 106–65, §§ 661(a)(1)(A), 662, Oct. 5, 1999, 113 Stat. 670, 672.)

CHAPTER 5—SPECIAL AND INCENTIVE PAYS [1]

Sec.
301. Incentive pay: hazardous duty.
301a. Incentive pay: aviation career.
301b. Special pay: aviation career officers extending period of active duty.
301c. Incentive pay: submarine duty.
301d. Multiyear retention bonus: medical officers of the armed forces.
301e. Multiyear retention bonus: dental officers of the armed forces.
302. Special pay: medical officers of the armed forces.
302a. Special pay: optometrists.
302b. Special pay: dental officers of the armed forces.
302c. Special pay: psychologists and nonphysician health care providers.
302d. Special pay: accession bonus for registered nurses.
302e. Special pay: nurse anesthetists.
302f. Special pay: reserve, recalled, or retained health care officers.
302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties.
302h. Special pay: accession bonus for dental officers.
302i. Special pay: pharmacy officers.
302j. Special pay: accession bonus for pharmacy officers.
303. Special pay: veterinarians.
303a. Special pay: health professionals; general provisions.
303b. Waiver of board certification requirements.
304. Special pay: diving duty.
305. Special pay: hardship duty pay.
305a. Special pay: career sea pay.
306. Special pay: officers holding positions of unusual responsibility and of critical nature.
306a. Special pay: members assigned to international military headquarters.
307. Special pay: special duty assignment pay for enlisted members.
308. Special pay: reenlistment bonus.
[308a. Repealed.]
308b. Special pay: reenlistment bonus for members of the Selected Reserve.
308c. Special pay: bonus for enlistment in the Selected Reserve.
308d. Special pay: enlisted members of the Selected Reserve assigned to certain high priority units.
308e. Special pay: bonus for reserve affiliation agreement.
[308f. Repealed.]
308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve.
308h. Special pay: bonus for reenlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve.
308i. Special pay: prior service enlistment bonus.
309. Special pay: enlistment bonus.
310. Special pay: duty subject to hostile fire or imminent danger.
312. Special pay: nuclear-qualified officers extending period of active duty.
312a. Special pay: nuclear-trained and qualified enlistment members.
312b. Special pay: nuclear career accession bonus.
312c. Special pay: nuclear career annual incentive bonus.
314. Special pay or bonus: qualified enlisted members extending duty at designated locations overseas.
315. Special pay: engineering and scientific career continuation pay.
316. Special pay: foreign language proficiency pay.
316a. Waiver of certification requirement.
317. Special pay: officers in critical acquisition positions extending period of active duty.
318. Special pay: special warfare officers extending period of active duty.
319. Special pay: surface warfare officer continuation pay.

320. Incentive pay: career enlisted flyers.
321. Special pay: judge advocate continuation pay.
322. Special pay: 15-year career status bonus for members entering service on or after August 1, 1986.
323. Special pay: retention incentives for members qualified in a critical military skill.

§ 301. Incentive pay: hazardous duty [1]

(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c), for the performance of hazardous duty required by orders. In this section, the term, "hazardous duty" means duty—

(1) involving frequent and regular participation in aerial flight as a crew members, as determined by the Secretary concerned, except for a member who is entitled to incentive pay under section 301a of this title;

(2) involving frequent and regular participation in aerial flight, not as a crew member under clause (1);

(3) involving parachute jumping as an essential part of military duty;

(4) involving the demolition of explosives as a primary duty, including training for that duty;

(5) inside a high- or low-pressure chamber;

(6) as a human acceleration or deceleration experimental subject;

(7) as a human test subject in thermal stress experiments;

(8) involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier or of a ship other than an aircraft carrier from which aircraft are launched;

---

[1] Section 622 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2042; 37 U.S.C. 301 note) provides as follows:

SEC. 622. RETENTION INCENTIVES INITIATIVE FOR CRITICALLY SHORT MILITARY OCCUPATIONAL SPECIALTIES.

(a) REQUIREMENT FOR NEW INCENTIVES.—The Secretary of Defense shall establish and provide for members of the Armed Forces qualified in critically short military occupational specialties a series of new incentives that the Secretary considers potentially effective for increasing the rates at which those members are retained in the Armed Forces for service in such specialties.

(b) CRITICALLY SHORT MILITARY OCCUPATIONAL SPECIALTIES.—For the purposes of this section, a military occupational specialty is a critically short military occupational specialty for an Armed Force if the number of members retained in that Armed Force in fiscal year 1998 for service in that specialty is less than 50 percent of the number of members of that Armed Force that were projected to be retained in that Armed Force for service in the specialty by the Secretary of the military department concerned as of October 1, 1997.

(c) INCENTIVES.—It is the sense of Congress that, among the new incentives established and provided under this section, the Secretary of Defense should include the following incentives:

(1) Family support and leave allowances.

(2) Increased special reenlistment or retention bonuses.

(3) Repayment of educational loans.

(4) Priority of selection for assignment to preferred permanent duty station or for extension at permanent duty station.

(5) Modified leave policies.

(6) Special consideration for Government housing or additional housing allowances.

(d) RELATIONSHIP TO OTHER INCENTIVES.—Incentives provided under this section are in addition to any special pay or other benefit that is authorized under any other provision of law.

(e) REPORTS.—(1) Not later than December 1, 1998, the Secretary of Defense shall submit to the congressional defense committees a report that identifies, for each of the Armed Forces, the critically short military occupational specialties to which incentives under this section are to apply.

(2) Not later than April 15, 1999, the Secretary of Defense shall submit to the congressional defense committees a report that specifies, for each of the Armed Forces, the incentives that are to be provided under this section.

(9) involving frequent and regular exposure to highly toxic pesticides or involving laboratory work that utilizes live dangerous viruses or bacteria;

(10) involving (A) the servicing of aircraft or missiles with highly toxic fuels or propellants, (B) the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used, or (C) the handling of chemical munitions (or components of such munitions); or

(11) involving frequent and regular participation in aerial flight by a member who is serving as an air weapons controller crew member (as defined by the Secretary concerned) aboard an airborne warning and control system aircraft (as designated by such Secretary) and who is not entitled to incentive pay under section 301a of this title.

(b) For the performance of the hazardous duty described in clause (1) of subsection (a), a member is entitled to monthly incentive pay as follows:

Pay grade:	*Monthly Rate*
O–10	$150
O–9	150
O–8	150
O–7	150
O–6	250
O–5	250
O–4	225
O–3	175
O–2	150
O–1	150
W–5	250
W–4	250
W–3	175
W–2	150
W–1	150
E–9	240
E–8	240
E–7	240
E–6	215
E–5	190
E–4	165
E–3	150
E–2	150
E–1	150

(c)(1) For the performance of hazardous duty described in clauses (2) through (10) of subsection (a), a member is entitled to $150 a month. However, a member performing hazardous duty described in clause (3) of that subsection who also performs as an essential part of such duty parachute jumping in military free fall operations involving parachute deployment by the jumper without the use of a static line is entitled to $225 a month.

(2)(A) For the performance of hazardous duty described in clause (11) of subsection (a), a member is entitled to monthly incentive pay based upon his years of service as an air weapons controller as follows:

Pay grade	Years of service as an air weapons controller							
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	
O–7 and above ...	$200	$200	$200	$200	$200	$200	$200	
O–6	225	250	300	325	350	350	350	

Pay grade	Years of service as an air weapons controller							
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	
O–5	200	250	300	325	350	350	350	
O–4	175	225	275	300	350	350	350	
O–3	150	156	188	206	350	350	350	
O–2	150	156	188	206	250	300	300	
O–1	150	156	188	206	250	250	250	
W–4	200	225	275	300	325	325	325	
W–3	175	225	275	300	325	325	325	
W–2	150	200	250	275	325	325	325	
W–1	150	150	150	175	325	325	325	
E–9	200	225	250	275	300	300	300	
E–8	200	225	250	275	300	300	300	
E–7	175	200	225	250	275	275	275	
E–6	156	175	200	225	250	250	250	
E–5	150	156	175	188	200	200	200	
E–4 and below	150	156	175	188	200	200	200	

Pay grade—Continued	Years of service as an air weapons controller—Continued							
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 25
O–7 and above	$200	$200	$200	$200	$200	$200	$200	$150
O–6	350	350	350	350	300	250	250	225
O–5	350	350	350	350	300	250	250	225
O–4	350	350	350	350	300	250	250	225
O–3	350	350	350	300	275	250	225	200
O–2	300	300	300	275	245	210	200	180
O–1	250	250	250	245	210	200	180	150
W–4	325	325	325	325	276	250	225	200
W–3	325	325	325	325	325	250	225	200
W–2	325	325	325	325	275	250	225	200
W–1	325	325	325	325	275	250	225	200
E–9	300	300	300	300	275	230	200	200
E–8	300	300	300	300	265	230	200	200
E–7	300	300	300	300	265	230	200	200
E–6	300	300	300	300	265	230	200	200
E–5	250	250	250	250	225	200	175	150
E–4 and below	200	200	200	200	175	150	150	150

(B) For purposes of this paragraph, the years of service of a member as an air weapons controller shall be computed, under regulations prescribed by the Secretary concerned, from the date the member begins training leading to a designation as an air weapons controller, but there shall be excluded from such computation any period of more than 90 days during which the member performs primary duties other than as an air weapons controller.

(d) In time of war, the President may suspend the payment of incentive pay for any hazardous duty described in subsection (a).

(e) A member is entitled to not more than two payments of incentive pay, authorized by this section, for a period of time during which he qualifies for more than one payment of that pay.

(f)(1) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, any duty described in subsection (a) for members entitled to basic pay, he is entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) or (c), as the case may be, for the performance of that hazardous duty by a member of a corresponding grade who is entitled to basic pay. He is entitled to the increase for as long as he is qualified for

it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title for the entire month.

(2)(A) If in any calendar month a member performs duty as described in paragraph (1) and while entitled to basic pay also performs hazardous duty as described in the same clause of subsection (a) as constitutes the predicate for his entitlement under paragraph (1), the earned units of measuring entitlement for incentive pay under this section shall be combined. If the sum of units determined under the preceding sentence equals or exceeds the minimum standard prescribed by the President for entitlement to pay specified under subsections (b) and (c) for a member of corresponding grade who is entitled to basic pay for the entire relevant month, the member shall be entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) or (c) for the performance of that hazardous duty by a member of corresponding grade who is entitled to basic pay for the entire month.

(B) A member who qualifies for entitlement under this paragraph is entitled to the increase for each day in the relevant month in which he is entitled to basic pay pursuant to section 204 of this title or to compensation under section 206 of this title.

(C) In this paragraph, the term "units" means the significant increments of performance prescribed as qualifying standards in regulations promulgated by the President pursuant to this section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 461; P.L. 88–132, §§ 6–8, Oct. 2, 1963, 77 Stat. 215, 216; P.L. 89–149, §§ 1–3, Aug. 28, 1965, 79 Stat. 585; P.L. 89–278, Oct. 20, 1965, 79 Stat. 1011; P.L. 89–718, § 52, Nov. 2, 1966, 80 Stat. 1121; P.L. 92–436, § 605, Sept. 26, 1972, 86 Stat. 740; P.L. 93–294, § 2(1), (2), May 31, 1974, 88 Stat. 177; P.L. 96–343, § 2(a), Sept. 8, 1980, 94 Stat. 1123; P.L. 96–513, § 516(5), Dec. 12, 1980, 94 Stat. 2938; P.L. 96–579, § 3(a)–(c), Dec. 23, 1980, 94 Stat. 3360; P.L. 97–60, § 111(a)–(c), Oct. 14, 1981, 95 Stat. 992; P.L. 98–94, § 903(a), Sept. 24, 1983, 97 Stat. 635; P.L. 98–525, § 624(a), Oct. 19, 1984, 98 Stat. 2542; P.L. 99–145, §§ 635(a), 647(a), § 1303(b)(2), Nov. 8, 1985, 99 Stat. 647, 648, 655, 740; P.L. 99–661, § 1342(a), Nov. 14, 1986, 100 Stat. 3991; P.L. 100–26, § 8(d)(1), (e)(2), Apr. 21, 1987, 101 Stat. 285, 286, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 614 and 1111(d), Dec. 5, 1991, 105 Stat. 1377 and 1492; P.L. 104–106, § 615, Feb. 10, 1996, 110 Stat. 361; P.L. 105–85, § 614, Nov. 18, 1997, 111 Stat. 1786; P.L. 105–261, § 614(a), Oct. 16, 1998, 112 Stat. 2039.)

§ 301a. Incentive pay: aviation career

(a)(1) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to aviation career incentive pay in the amount set forth in subsection (b) for the frequent and regular performance of operational or proficiency flying duty required by orders.

(2) Aviation career incentive pay shall be restricted to regular and reserve officers who hold, or are in training leading to, an aeronautical rating or designation and who engage and remain in aviation service on a career basis.

(3) Under regulations prescribed by the Secretary of Defense, the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or the Secretary of Commerce and the Secretary of Health and Human Services with respect to members under their respective jurisdiction, an offi-

cer (except a flight surgeon or other medical officer) who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is entitled to continuous monthly incentive pay in the amount set forth in subsection (b) that is applicable to him. A flight surgeon or other medical officer who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is not entitled to continuous monthly incentive pay but is entitled to monthly incentive pay in the amounts set forth in subsection (b) for the frequent and regular performance of operational flying duty.

(4) To be entitled to continuous monthly incentive pay, an officer must perform the prescribed operational flying duties (including flight training but excluding proficiency flying) for 8 of the first 12, and 12 of the first 18 years of the aviation service of the officer. However, if an officer performs the prescribed operational flying duties (including flight training but excluding proficiency flying) for at least 10 but less than 12 of the first 18 years of the aviation service of the officer, the officer will be entitled to continuous monthly incentive pay for the first 22 years of aviation service of the officer. Entitlement to continuous monthly incentive pay ceases for an officer (other than a warrant officer) upon completion of 25 years of aviation service, but such an officer in a pay grade below pay grade O–7 remains entitled to monthly incentive pay under subsection (b)(1) for the performance of operational flying duty.

(5) If upon completion of either 12 or 18 years of aviation service it is determined that an officer has failed to perform the minimum prescribed operational flying duty requirements during the prescribed periods of time, his entitlement to continuous monthly incentive pay ceases. For the needs of the service, the Secretary concerned may permit, on a case by case basis, an officer to continue to receive continuous monthly incentive pay despite the failure of the officer to perform the prescribed operational flying duty requirements during the prescribed periods of time so long as the officer has performed those requirements for not less than 6 years of aviation service. The Secretary concerned may not delegate the authority in the preceding sentence to permit the payment of incentive pay under this subsection. If at the completion of 12 years of aviation service entitlement to continuous monthly incentive pay ceases, entitlement to that pay may again commence at the completion of 18 years of aviation service upon completion of the minimum operational flying duty requirements, such pay to continue for a period of time as prescribed in accordance with this section. However, if entitlement to continuous monthly incentive pay ceases in the case of any officer at the completion of either 12 or 18 years of aviation service, such officer remains entitled to monthly incentive pay for the performance of subsequent operational or proficiency flying duties up to the maximum period of time prescribed in accordance with this section.

(6) In this section:

(A) The term "aviation service" means service performed by an officer (except a flight surgeon or other medical officer)

while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(B) The term "operational flying duty" means flying performed under competent orders by rated or designated members while serving in assignments in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying performed by members in training that leads to the award of an aeronautical rating or designation.

(C) The term "proficiency flying duty" means flying performed under competent orders by rated or designated members while serving in assignments in which such skills would normally not be maintained in the performance of assigned duties.

(D) The term "officer" includes an individual enlisted, and designated, as an aviation cadet under section 6911 of title 10.

(b)(1) A member who satisfies the requirements described in subsection (a) is entitled to monthly incentive pay as follows:

Years of aviation service (including flight training) as an officer:	Monthly rate
2 or less	$125
Over 2	$156
Over 3	$188
Over 4	$206
Over 6	$650
Over 14	$840
Over 22	$585
Over 23	$495
Over 24	$385
Over 25	$250

(2) An officer in a pay grade above O–6 is entitled, until the officer completes 25 years of aviation service, to be paid at the rates set forth in the table in paragraph (1), except that—

(A) an officer in pay grade O–7 may not be paid at a rate greater than $200 a month; and

(B) an officer in pay grade O–8 or above may not be paid at a rate greater than $206 a month.

(3) For a warrant officer with over 22, 23, 24, or 25 years of aviation service who is qualified under subsection (a), the rate prescribed in the table in paragraph (1) for officers with over 14 years of aviation service shall continue to apply to the warrant officer.

(4) An officer serving as an air battle manager who is entitled to aviation career incentive pay under this section and who, before becoming entitled to aviation career incentive pay, was entitled to incentive pay under section 301(a)(11) of this title, shall be paid the monthly incentive pay at the higher of the following rates:

(A) The rate otherwise applicable to the member under this subsection.

(B) The rate at which the member was receiving incentive pay under section 301(c)(2)(A) of this title immediately before the member's entitlement to aviation career incentive pay under this section.

(c) In time of war, the President may suspend the payment of aviation career incentive pay.

(d) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, duty described in subsection (a) for members entitled to basic pay, he is entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) for the performance of that duty by a member with corresponding years of aviation service who is entitled to basic pay. Such member is entitled to the increase for as long as he is qualified for it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

(f) The Secretary of Defense shall submit annually to Congress a report specifying for the year covered by the report—

(1) the total number of officers who were determined under subsection (a)(5) to have failed to perform the minimum prescribed operational flying duty requirements;

(2) the number of those officers who continued to receive continuous monthly incentive pay despite their failure to perform the minimum prescribed operational flying duty requirements and the extent to which they failed to perform those requirements; and

(3) the reasons for the exercise of the authority under the second sentence of subsection (a)(5) in the case of each officer specified pursuant to paragraph (2).

(Added P.L. 93–294, § 2(3), May 31, 1974, 88 Stat. 177, and amended P.L. 94–273, § 3(21), Apr. 21, 1976, 90 Stat. 377; P.L. 96–343, § 2(b), Sept. 8, 1980, 94 Stat. 1124; P.L. 96–513, Title V, § 516(6), Dec. 12, 1980, 94 Stat. 2938; P.L. 97–60, Title I, § 112(a), (b), Oct. 14, 1981, 95 Stat. 994, 995; P.L. 99–661, Div. A, Title VI, § 632(a), Nov. 14, 1986, 100 Stat. 3883; P.L. 100–26, § 8(e)(3), Apr. 21, 1987, 101 Stat. 286; P.L. 101–189, § 631, Nov. 29, 1989, 103 Stat. 1449; P.L. 101–510, § 1322(c)(1), Nov. 5, 1990, 104 Stat. 1672, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 616, Feb. 10, 1996, 110 Stat. 362; P.L. 105–85, § 615(a), (b), Nov. 18, 1997, 111 Stat. 1787 (repealed before effective date of amendments by section 615(d) of P.L. 105–261); P.L. 105–261, § 615(a)(1), (b), (c)(1), Oct. 16, 1998, 112 Stat. 2040, 2041; P.L. 106–65, § 614(a), Oct. 5, 1999, 113 Stat. 651.)

§ 301b. Special pay: aviation career officers extending period of active duty

(a) BONUS AUTHORIZED.—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on December 31, 2001, executes a written agreement to remain on active duty in aviation service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(b) COVERED OFFICERS.—An aviation officer referred to in subsection (a) is an officer of a uniformed service who—

(1) is entitled to aviation career incentive pay under section 301a of this title;

(2) is in a pay grade below pay grade 0–7;

(3) is qualified to perform operational flying duty; and

(4) has completed any active duty service commitment incurred for undergraduate aviator training.

(c) AMOUNT OF BONUS.—The amount of a retention bonus paid under this section may not be more than $25,000 for each year covered by the written agreement to remain on active duty.

(d) PRORATION.—The term of an agreement under subsection (a) and the amount of the bonus under subsection (c) may be prorated as long as such agreement does not extend beyond the date on which the officer making such agreement would complete 25 years of aviation service.

(e) PAYMENT OF BONUS.—Upon the acceptance of a written agreement under subsection (a) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed and may be paid by the Secretary in either a lump sum or installments.

(f) ADDITIONAL PAY.—A retention bonus paid under this section is in addition to any other pay and allowances to which an officer is entitled.

(g) REPAYMENT OF BONUS.—(1) If an officer who has entered into a written agreement under subsection (a) and has received all or part of a retention bonus under this section fails to complete the total period of active duty specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay 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 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1).

(h) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section. Regulations prescribed by the Secretary of a military department shall be subject to the approval of the Secretary of Defense.

(i) REPORTS.—(1) Not later than February 15 of each year, the Secretaries concerned shall submit to the Secretary of Defense a report analyzing the effect of the provision of retention bonuses to aviation officers during the preceding fiscal year on the retention of qualified aviators.

(2) Not later than March 15 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 copies of the reports submitted to the Secretary under paragraph (1) with regard to the preceding fiscal year, together with such comments and recommendations as the Secretary considers appropriate.

(j) DEFINITIONS.—In this section:

(1) The term "aviation service" means service performed by an officer (except a flight surgeon or other medical officer) while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(2) The term "operational flying duty" has the meaning given such term in section 301a(a)(6)(B) of this title.

(Added P.L. 96–342, § 806(a)(1), Sept. 8, 1980, 94 Stat. 1095, and amended P.L. 97–60, § 113, Oct. 14, 1981, 95 Stat. 995; P.L. 98–94, § 904(a), Sept. 24, 1983, 97 Stat. 635; P.L. 98–525, § 622(a)(1), (2), Oct. 19, 1984, 98 Stat. 2540; P.L. 99–145, § 636, Nov. 8, 1985, 99 Stat. 648; P.L. 99–661, § 631(a), Nov. 14, 1986, 100 Stat. 3883; P.L. 100–180, § 622(a); Dec. 4, 1987, 101 Stat. 1100; P.L. 101–189, § 632, Nov. 29, 1989, 103 Stat. 1451; P.L. 102–190, § 612(a)(1), Dec. 5, 1991, 105 Stat. 1376; P.L. 102–484, § 612(c), § 1054(a)(1), Oct. 23, 1992, 106 Stat. 2421, 2502; Nov. 30, 1993, P.L. 103–160, § 613(a), 107 Stat. 1681; P.L. 103–337, § 613(a), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, §§ 613(a), 1502(b), Feb. 10, 1996, 110 Stat. 359, 506; P.L. 104–201, § 613(a), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, §§ 613(a), 616(a)–(d), Nov. 18, 1997, 111 Stat. 1786, 1787; P.L. 105–261, §§ 613(a), 615(a)(2), (c)(2), Oct. 16, 1998, 112 Stat. 2039, 2040, 2041; P.L. 106–65, §§ 613(a), 615(a)–(f), 1067(2), Oct. 5, 1999, 113 Stat. 650, 651, 774; P.L. 106–398, § 1 (§§ 623(a), 1087(b)(1)), Oct. 30, 2000, 114 Stat. 1654A–151, 292.)

§ 301c. Incentive pay: submarine duty

(a)(1) Subject to regulations prescribed by the President, a member of the naval service who is entitled to basic pay, and (A) holds (or is in training leading to) a submarine duty designator, (B) is in and remains in the submarine service on a career basis, and (C) meets the requirements of paragraph (3), is entitled to continuous monthly submarine duty incentive pay in the amount set forth in subsection (b).

(2) Subject to regulations prescribed by the President, a member of the naval service who is entitled to basic pay but is not entitled to continuous monthly submarine duty incentive pay under paragraph (1) is entitled to submarine duty incentive pay in the amount set forth in subsection (b) for any period during which such member performs frequent and regular operational submarine duty (as defined in paragraph (5)) required by orders.

(3) To be entitled to continuous monthly submarine duty incentive pay through 26 years of service (as computed under section 205 of this title, but excluding, in the case of an officer, periods as an enlisted member before initial appointment as an officer), a member must perform operational submarine duties for at least 6 of the first 12, and at least 10 of the first 18 years of his submarine service. However, if a member performs the prescribed operational submarine duties for at least 8 but less than 10 of the first 18 years of his submarine service, he is entitled to continuous monthly submarine duty incentive pay for the first 22 years of his service (as computed under section 205 of this title, but excluding, in the case of an officer, periods as an enlisted member before initial appointment as an officer).

(4) If upon completion of either 12 or 18 years of submarine service it is determined that a member has failed to perform the minimum prescribed operational submarine duty requirements during the prescribed periods of time, his entitlement to continuous monthly submarine duty incentive pay ceases. If entitlement to continuous monthly submarine duty incentive pay ceases upon completion of 12 years of submarine service, entitlement to that pay may again commence upon completion of 18 years of submarine service if the minimum operational submarine duty requirements have been met, and such pay shall continue for the period of time prescribed in accordance with this section. However, if entitlement to continuous monthly submarine duty incentive pay ceases in the case of any member at the completion of either 12 or 18 years of submarine service or 26 years of service (as computed

under section 205 of this title, but excluding, in the case of an officer, periods as an enlisted member before initial appointment as an officer), such member shall be entitled to that pay in the amount set forth in subsection (b) for the performance of subsequent operational submarine duty, or for the performance of service as a member of a submarine operational command staff, if such member's duties require serving on a submarine during underway operations.

(5) In this section:

(A) The term "operational submarine duty" means duty—

(i) while attached under competent orders to a submarine, while serving as an operator or crew member of an operational submersible (including an undersea exploration or research vehicle), while undergoing training preliminary to assignment to a nuclear-powered submarine, while undergoing rehabilitation after assignment to a nuclear-powered submarine, or, in the case of a member qualified in submarines, while attached as a member of a submarine operational command staff whose duties require serving on a submarine during underway operations—

(I) during one calendar month: 48 hours, except that hours served underway in excess of 48 as a member of a submarine operational command staff during any of the immediately preceding five calendar months and not already used to qualify for incentive pay may be applied to satisfy the underway time requirements for the current month;

(II) during any two consecutive calendar months when the requirements of subclause (I) of this clause have not been met: 96 hours; or

(III) during any three consecutive calendar months when the requirements of subclause (II) of this clause have not been met: 144 hours;

(ii) while receiving instruction to prepare for assignment to a submarine of advanced design, or

(iii) while receiving instruction to prepare for a position of increased responsibility on a submarine.

(B) The term "submarine service" means the service performed, under regulations prescribed by the Secretary of the Navy, by a member, and the years of submarine service are computed beginning with the effective date of the initial order to perform submarine service.

(b) A member who meets the requirements prescribed in subsection (a) is entitled to monthly submarine duty incentive pay as follows:

ENLISTED MEMBERS

Pay grade	Years of service computed under section 205						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E–9	$225	$225	$225	$270	$295	$310	$315
E–8	225	225	225	250	270	295	310
E–7	225	225	225	250	255	265	275

ENLISTED MEMBERS—Continued

Pay grade	Years of service computed under section 205						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E–6	155	170	175	215	230	245	255
E–5	140	155	155	175	190	195	195
E–4	80	95	100	170	175	175	175
E–3	80	90	100	170	175	175	90
E–2	75	90	90	90	90	90	90
E–1	75	75	75	75	75	75	75
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E–9	$330	$345	$355	$355	$355	$355	$355
E–8	315	330	330	345	345	345	345
E–7	295	310	310	310	310	310	310
E–6	265	265	265	265	265	265	265
E–5	195	195	195	195	195	195	195
E–4	175	175	175	175	175	175	175
E–3	90	90	90	90	90	90	90
E–2	90	90	90	90	90	90	90
E–1	75	75	75	75	75	75	75

COMMISSIONED OFFICERS

Pay grade	Years of service computed under section 205						
	2 or less	Over 2	Over 3	Over 4	Over 5	Over 6	Over 10
O–10	$355	$355	$355	$355	$355	$355	$355
O–9	355	355	355	355	355	355	355
O–8	355	355	355	355	355	355	355
O–7	355	355	355	355	355	355	355
O–6	595	595	595	595	595	595	595
O–5	595	595	595	595	595	595	595
O–4	365	365	365	405	595	595	595
O–3	355	355	355	390	595	595	595
O–2	235	235	235	235	235	235	355
O–1	175	175	175	175	175	175	355
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
O–10	$355	$355	$355	$355	$355	$355	$355
O–9	355	355	355	355	355	355	355
O–8	355	355	355	355	355	355	355
O–7	355	355	540	355	535	410	355
O–6	595	595	595	595	595	595	595
O–5	595	595	595	595	595	595	595
O–4	595	595	595	595	595	595	595
O–3	595	595	595	595	595	595	595
O–2	355	355	355	355	355	355	355
O–1	355	355	355	355	355	355	355

WARRANT OFFICERS

Pay grade	Years of service computed under section 205						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
W–5	$235	$310	$310	$355	$355	$355	$355
W–4	235	310	310	355	355	355	355
W–3	235	310	310	355	355	355	355
W–2	235	310	310	355	355	355	355
W–1	235	310	310	355	355	355	355
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
W–5	$355	$355	$355	$355	$355	$355	$355
W–4	355	355	355	355	355	355	355
W–3	355	355	355	355	355	355	355
W–2	355	355	355	355	355	355	355
W–1	355	355	355	355	355	355	355

(c)(1) An officer who fails of selection for assignment as an executive officer or commanding officer of a submarine or who declines to serve in either such position may not be paid submarine duty incentive pay except for periods during which the officer is serving on a submarine during underway operations.

(2) An enlisted member may not be paid continuous submarine duty incentive pay while serving ashore between submarine sea duty assignments unless the member has a sufficient period of enlistment (including any extension of an enlistment) remaining to be reasssigned to submarine sea duty.

(d) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of the Naval Reserve who is entitled to compensation under section 206 of this title, performs, under orders, duty on a submarine during underway operations, he is eligible for an increase in such compensation equal to one-thirtieth of the monthly incentive pay authorized by subsection (b) for the performance of that duty by a member of a corresponding grade and years of service who is entitled to basic pay. Such a member is eligible for the increase for each day served, for as long as he is qualified for it, during each regular period of appropriate duty.

(Added P.L. 96–579, § 3(d), Dec. 23, 1980, 94 Stat. 3360, and amended P.L. 97–39, § 701(a), (b), Aug. 14, 1981, 95 Stat. 942; P.L. 97–60, § 114, Oct. 14, 1981, 95 Stat. 995; P.L. 99–45, § 633(a), Nov. 8, 1985, 99 Stat. 646; P.L. 100–26, § 8(e)(4), Apr. 21, 1987, 101 Stat. 286; P.L. 100–80, § 623(a), (b), Dec. 4, 1987, 101 Stat. 1101; P.L. 100–456, § 1233(*l*)(1), Sept. 29, 1988, 102 Stat. 2058; P.L. 100–224, § 5(a)(2), Dec. 30, 1987, 101 Stat. 1538; P.L. 101–510, § 1322(c)(1), Nov. 5, 1990, 104 Stat. 1672, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 1111(d)(2), Dec. 5, 1991, 105 Stat. 1492.)

§ 301d. Multiyear retention bonus: medical officers of the armed forces

(a) BONUS AUTHORIZED.—(1) A medical officer described in subsection (b) who executes a written agreement to remain on active duty for two, three, or four years after completion of any other active-duty service commitment may, upon acceptance of the written agreement by the Secretary of the military department concerned, be paid a retention bonus as provided in this section.

(2) The amount of a retention bonus under paragraph (1) may not exceed $14,000 for each year covered by a four-year agreement. The maximum yearly retention bonus for two-year and three-year agreements shall be reduced to reflect the shorter service commitment.

(b) ELIGIBLE OFFICERS.—This section applies to an officer of the armed forces who—

(1) is an officer of the Medical Corps of the Army or the Navy or an officer of the Air Force designated as a medical officer;

(2) is in a pay grade below pay grade 0–7;

(3) has at least eight years of creditable service (computed as described in section 302(g) of this title) or has completed any active-duty service commitment incurred for medical education and training; and

(4) has completed initial residency training (or will complete such training before September 30 of the fiscal year in which the officer enters into an agreement under subsection (a)).

(c) REFUNDS.—(1) Refunds shall be required, on a pro rata basis, of sums paid under this section if the officer who has received the payment fails to complete the total period of active duty specified in the agreement, as conditions and circumstances warrant.

(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, United States Code, that is entered less than five years after the termination of an agreement under this section does not discharge the member signing such agreement from a debt arising under such agreement or under paragraph (1). This paragraph applies to any case commenced under title 11 after November 5, 1990.

(Added P.L. 101–510 § 611, Nov. 5, 1990, 104 Stat. 1576, and amended P.L. 102–484, § 1054(a)(2), Oct. 23, 1992, 106 Stat. 2502.)

§ 301e. Multiyear retention bonus: dental officers of the armed forces

(a) BONUS AUTHORIZED.—(1) A dental officer described in subsection (b) who executes a written agreement to remain on active duty for two, three, or four years after completion of any other active-duty service commitment may, upon acceptance of the written agreement by the Secretary of the military department concerned, be paid a retention bonus as provided in this section.

(2) The amount of a retention bonus under paragraph (1) may not exceed $14,000 for each year covered by a four-year agreement. The maximum yearly retention bonus for two-year and three-year agreements shall be reduced to reflect the shorter service commitment.

(b) OFFICERS AUTOMATICALLY ELIGIBLE.—Subsection (a) applies to an officer of the armed forces who—

(1) is an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer;

(2) has a dental specialty in oral and maxillofacial surgery;

(3) is in a pay grade below pay grade O–7;

(4) has at least eight years of creditable service (computed as described in section 302b(g) of this title) or has completed any active-duty service commitment incurred for dental education and training; and

(5) has completed initial residency training (or will complete such training before September 30 of the fiscal year in which the officer enters into an agreement under subsection (a)).

(c) EXTENSION OF BONUS TO OTHER DENTAL OFFICERS.—At the discretion of the Secretary of the military department concerned, the Secretary may enter into a written agreement described in subsection (a)(1) with a dental officer who does not have the dental specialty specified in subsection (b)(2), and pay a retention bonus to such an officer as provided in this section, if the officer otherwise satisfies the eligibility requirements specified in subsection (b). The Secretaries shall exercise the authority provided in this section in a manner consistent with regulations prescribed by the Secretary of Defense.

(d) REFUNDS.—(1) Refunds shall be required, on a pro rata basis, of sums paid under this section if the officer who has received the payment fails to complete the total period of active duty specified in the agreement, as conditions and circumstances warrant.

(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, United States Code, that is entered less than five years after the termination of an agreement under this section does not discharge the member signing such agreement from a debt arising under such agreement or under paragraph (1). This paragraph applies to any case commenced under title 11 after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998.

(Added P.L. 105–85, § 617(a), Nov. 18, 1997, 111 Stat. 1788.)

§ 302. Special pay: medical officers of the armed forces

(a) VARIABLE, ADDITIONAL, AND BOARD CERTIFICATION SPECIAL PAY.—(1) An officer who is an officer of the Medical Corps of the Army or the Navy or an officer of the Air Force designated as a medical officer and who is on active duty under a call or order to active duty for a period of not less than one year is entitled to special pay in accordance with this subsection.

(2) An officer described in paragraph (1) who is serving in a pay grade below pay grade O–7 is entitled to variable special pay at the following rates:

(A) $1,200 per year, if the officer is undergoing medical internship training.

(B) $5,000 per year, if the officer has less than six years of creditable service and is not undergoing medical internship training.

(C) $12,000 per year, if the officer has at least six but less than eight years of creditable service.

(D) $11,500 per year, if the officer has at least eight but less than ten years of creditable service.

(E) $11,000 per year, if the officer has at least ten but less than twelve years of creditable service.

(F) $10,000 per year, if the officer has at least twelve but less than fourteen years of creditable service.

(G) $9,000 per year, if the officer has at least fourteen but less than eighteen years of creditable service.

(H) $8,000 per year, if the officer has at least eighteen but less than twenty-two years of creditable service.

(I) $7,000 per year, if the officer has twenty-two or more years of creditable service.

(3) An officer described in paragraph (1) who is serving in a pay grade above pay grade O–6 is entitled to variable special pay at the rate of $7,000 per year.

(4) Subject to subsection (c) an officer entitled to variable special pay under paragraph (2) or (3) is entitled to additional special pay of $15,000 for any twelve-month period during which the officer is not undergoing medical internship or initial residency training.

(5) An officer who is entitled to variable special pay under paragraph (2) or (3) and who is board certified is entitled to additional special pay at the following rates:

(A) $2,500 per year, if the officer has less than ten years of creditable service.

(B) $3,500 per year, if the officer has at least ten but less than twelve years of creditable service.

(C) $4,000 per year, if the officer has at least twelve but less than fourteen years of creditable service.

(D) $5,000 per year, if the officer has at least fourteen but less than eighteen years of creditable service.

(E) $6,000 per year, if the officer has eighteen or more years of creditable service.

(b) INCENTIVE SPECIAL PAY.—(1) Subject to subsection (c) and paragraph (2) and under regulations prescribed under section 303a(a) of this title, an officer who is entitled to variable special pay under subsection (a)(2) may be paid incentive special pay for any twelve-month period during which the officer is not undergoing medical internship or initial residency training. No payment to an officer under this subsection may exceed $16,000 for any twelve-month period beginning in fiscal year 1990, $22,000 for any twelve-month period beginning in fiscal year 1991, $29,000 for any twelve-month period beginning in fiscal year 1992, and $36,000 for any twelve-month period beginning after fiscal year 1992.

(2) An officer is not eligible for incentive special pay under paragraph (1) unless the Secretary concerned has determined that such officer is qualified in the medical profession.

(c) ACTIVE-DUTY AGREEMENT.—(1) An officer may not be paid additional special pay under subsection (a)(4) or incentive special pay under subsection (b) for any twelve-month period unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

(2) Under regulations prescribed by the Secretary of Defense under section 303a(a) of this title, the Secretary of the military department concerned may terminate at any time an officer's entitlement to the special pay authorized by subsection (a)(4) or (b)(1). If such entitlement is terminated, the officer concerned is entitled to be paid such special pay only for the part of the period of active duty that he served, and he may be required to refund any amount in excess of that entitlement.

(d) REGULATIONS.—Regulations prescribed by the Secretary of Defense under section 303a(a) of this title shall include standards for determining—

(1) whether an officer is undergoing medical internship or initial residency training for purposes of subsections (a)(2)(A), (a)(2)(B), (a)(4), and (b)(1); and

(2) whether an officer is board certified for purposes of subsection (a)(5).

(e) FREQUENCY OF PAYMENTS.—Special pay payable to an officer under paragraphs (2), (3), and (5) of subsection (a) shall be paid monthly. Special pay payable to an officer under subsection (a)(4) or (b)(1) shall be paid annually at the beginning of the twelve-month period for which the officer is entitled to such payment.

(f) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—An officer who voluntarily terminates service on active duty before the end of the period for which a payment was made to such officer under subsection (a)(4) or (b)(1) shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made.

(g) DETERMINATION OF CREDITABLE SERVICE.—For purposes of this section, creditable service of an officer is computed by adding—

(1) all periods which the officer spent in medical internship or residency training during which the officer was not on active duty; and

(2) all periods of active service in the Medical Corps of the Army or Navy, as an officer of the Air Force designated as a medical officer, or as a medical officer of the Public Health Service.

(h) RESERVE MEDICAL OFFICERS SPECIAL PAY.—(1) A reserve medical officer described in paragraph (2) is entitled to special pay at the rate of $450 a month for each month of active duty, including active duty in the form of annual training, active duty for training, and active duty for special work.

(2) A reserve medical officer referred to in paragraph (1) is a reserve officer who—

(A) is an officer of the Medical Corps of the Army or the Navy or an officer of the Air Force designated as a medical officer; and

(B) is on active duty under a call or order to active duty for a period of less than one year.

(i) EFFECT OF DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11 that is entered less than 5 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 (c)(2) or (f). This para-

graph applies to any case commenced under title 11 after September 30, 1985.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 464; P.L. 88–2, § 5, Mar. 28, 1963, 77 Stat. 4; P.L. 88–132, § 4, Oct. 2, 1963, 77 Stat. 212; P.L. 89–718, § 53, Nov. 2, 1966, 80 Stat. 1122; P.L. 90–40, § 5, June 30, 1967, 81 Stat. 105; P.L. 92–129, § 104, Sept. 28, 1971, 85 Stat. 355; P.L. 93–64, § 201, July 9, 1973, 87 Stat. 149; P.L. 93–274, § 1(1), May 6, 1974, 88 Stat. 94; P.L. 96–284, § 2(a), June 28, 1980, 94 Stat. 587; P.L. 96–513, § 415, Dec. 12, 1980, 94 Stat. 2906; P.L. 99–145, § 640, Nov. 8, 1985, 99 Stat. 652; P.L. 99–661, §§ 1342(d), 1343(b)(1), Nov. 14, 1986, 100 Stat. 3991, 3995; P.L. 100–180, § 716(a), Dec. 4, 1987, 101 Stat. 1113; P.L. 101–189, § 702, Nov. 29, 1989, 103 Stat. 1468; P.L. 101–510, § 612, Nov. 5, 1990, 104 Stat. 1577; P.L. 106–398, § 1 (§ 625(a)), Oct. 30, 2000, 114 Stat. 1654A–153.)

§ 302a. Special pay: optometrists

(a) REGULAR SPECIAL PAY.—Each of the following officers is entitled to special pay at the rate of $100 a month for each month of active duty:

(1) A commissioned officer—

(A) of the Regular Army, Regular Navy, or Regular Air Force who is designated as an optometry officer; or

(B) who is an optometry officer of the Regular Corps of the Public Health Service.

(2) A commissioned officer—

(A) of a Reserve component of the Army, Navy, or Air Force who is designated as an optometry officer; or

(B) who is an optometry officer of the Reserve Corps of the Public Health Service,

who is on active duty as a result of a call or order to active duty for a period of at least one year.

(3) A general officer of the Army or the Air Force appointed, from any of the categories named in clause (1) or (2), in the Army, Air Force, or the National Guard, as the case may be.

(b) RETENTION SPECIAL PAY.—(1) Under regulations prescribed under section 303a(a) of this title, the Secretary concerned may pay an officer described in paragraph (2) a retention special pay of not more than $6,000 for any twelve-month period during which the officer is not undergoing an internship or initial residency training.

(2) An officer referred to in paragraph (1) is an officer of a uniformed service who—

(A) is entitled to special pay under subsection (a);

(B) has completed any initial active-duty service commitment incurred for education and training; and

(C) is determined by the Secretary concerned to be qualified as an optometrist.

(3) An officer may not be paid retention special pay under paragraph (1) for any twelve-month period unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

(4) The Secretary concerned may terminate at any time the eligibility of an officer to receive retention special pay under paragraph (1). If such eligibility is terminated, the officer concerned shall receive such special pay only for the part of the period of active duty that the officer served and may be required to refund any amount in excess of that amount.

(Added P.L. 92–129, § 202(a), Sept. 28, 1971, 85 Stat. 357, and amended P.L. 93–64, § 202, July 9, 1973, 87 Stat. 149; P.L. 95–114, § 2, Sept. 30, 1977, 91 Stat. 1046; P.L. 95–485, § 801(b), Oct. 20, 1978, 92 Stat. 1619; P.L. 96–284, § 4(a), June 28, 1980, 94 Stat. 591; P.L. 100–26, § 8(d)(2), Apr. 21, 1987, 101 Stat. 285; P.L. 101–510, § 617, Nov. 5, 1990, 104 Stat. 1578; P.L. 104–201, § 614(a), Sept. 23, 1996, 110 Stat. 2544; P.L. 106–398, § 1 (§ 626(a)), Oct. 30, 2000, 114 Stat. 1654A–153.)

§ 302b. Special pay: dental officers of the armed forces

(a) VARIABLE, ADDITIONAL, AND BOARD CERTIFICATION SPECIAL PAY.—(1) An officer who—

(A) is an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer; and

(B) is on active duty under a call or order to active duty for a period of not less than one year,

is entitled to special pay in accordance with this subsection.

(2) An officer described in paragraph (1) who is serving in a pay grade below pay grade O–7 is entitled to variable special pay at the following rates:

(A) $3,000 per year, if the officer is undergoing dental internship training or has less than three years of creditable service.

(B) $7,000 per year, if the officer has at least three but less than six years of creditable service and is not undergoing dental internship training.

(C) $7,000 per year, if the officer has at least six but less than eight years of creditable service.

(D) $12,000 per year, if the officer has at least eight but less than 12 years of creditable service.

(E) $10,000 per year, if the officer has at least 12 but less than 14 years of creditable service.

(F) $9,000 per year, if the officer has at least 14 but less than 18 years of creditable service.

(G) $8,000 per year, if the officer has 18 or more years of creditable service.

(3) An officer described in paragraph (1) who is serving in a pay grade above pay grade O–6 is entitled to variable special pay at the rate of $7,000 per year.

(4) Subject to subsection (b), an officer entitled to variable special pay under paragraph (2) or (3) is entitled to additional special pay for any 12-month period during which the officer is not undergoing dental internship or residency training. Such additional special pay shall be paid at the following rates:

(A) $4,000 per year, if the officer has less than three years of creditable service.

(B) $6,000 per year, if the officer has at least three but less than 10 years of creditable service.

(C) $15,000 per year, if the officer has 10 or more years of creditable service.

(5) An officer who is entitled to variable special pay under paragraph (2) or (3) and who is board certified is entitled to additional special pay at the following rates:

(A) $2,500 per year, if the officer has less than 10 years of creditable service.

(B) $3,500 per year, if the officer has at least 10 but less than 12 years of creditable service.

(C) $4,000 per year, if the officer has at least 12 but less than 14 years of creditable service.

(D) $5,000 per year, if the officer has at least 14 but less than 18 years of creditable service.

(E) $6,000 per year, if the officer has 18 or more years of creditable service.

(b) ACTIVE-DUTY AGREEMENT.—(1) An officer may not be paid additional special pay under subsection (a)(4) for any 12-month period unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

(2) Under regulations prescribed by the Secretary of Defense under section 303a(a) of this title, the Secretary of the military department concerned may terminate at any time an officer's entitlement to the special pay authorized by subsection (a)(4). If such entitlement is terminated, the officer concerned is entitled to be paid such special pay only for the part of the period on active duty that the officer served, and the officer may be required to refund any amount in excess of that entitlement.

(c) REGULATIONS.—Regulations prescribed by the Secretary of Defense under section 303a(a) of this title shall include standards for determining—

(1) whether an officer is undergoing internship or residency training for purposes of subsections (a)(2)(A), (a)(2)(B), and (a)(4); and

(2) whether an officer is board certified for purposes of subsection (a)(5).

(d) FREQUENCY OF PAYMENTS.—Special pay payable to an officer under paragraphs (2), (3), and (5) of subsection (a) shall be paid monthly. Special pay payable to an officer under subsection (a)(4) shall be paid annually at the beginning of the 12-month period for which the officer is entitled to such payment.

(e) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—An officer who voluntarily terminates service on active duty before the end of the period for which a payment was made to such officer under subsection (a)(4) shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made.

(f) EFFECT OF DISCHARGE IN BANKRUPTCY.—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 (b) 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, 1985.

(g) DETERMINATION OF CREDITABLE SERVICE.—For purposes of this section, creditable service of an officer is computed by adding—

(1) all periods which the officer spent in dental internship or residency training during which the officer was not on active duty; and

(2) all periods of active service in the Dental Corps of the Army or Navy, as an officer of the Air Force designated as a dental officer, or as a dental officer of the Public Health Service.

(h) RESERVE DENTAL OFFICERS SPECIAL PAY.—(1) A reserve dental officer described in paragraph (2) is entitled to special pay at the rate of $350 a month for each month of active duty, including active duty in the form of annual training, active duty for training, and active duty for special work.

(2) A reserve dental officer referred to in paragraph (1) is a reserve officer who—

(A) is an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer; and

(B) is on active duty under a call or order to active duty for a period of less than one year.

(Added P.L. 93–274, § 1(2), May 6, 1974, 88 Stat. 94, and amended P.L. 96–284, § 4(b), June 28, 1980, 94 Stat. 591; P.L. 99–145, § 639(a), Nov. 8, 1985, 99 Stat. 649, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 104–201, § 615(a), (b), (e), Sept. 23, 1996, 110 Stat. 2544, 2547; P.L. 105–85, § 618, Nov. 18, 1997, 111 Stat. 1789.)

§ 302c. Special pay: psychologists and nonphysician health care providers

(a) PUBLIC HEALTH SERVICE CORPS.—A member who is—

(1) an officer in the Regular or Reserve Corps of the Public Health Service and is designated as a psychologist; and

(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b).

(b) RATE OF SPECIAL PAY.—The rate of special pay to which an officer is entitled pursuant to subsection (a) shall be—

(1) $2,000 per year, if the officer has less than 10 years of creditable service;

(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

(3) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service;

(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

(5) $5,000 per year, if the officer has 18 or more years of creditable service.

(c) ARMY, NAVY, AND AIR FORCE PSYCHOLOGISTS.—The Secretary of Defense may provide special pay at the rates specified in subsection (b) to an officer who—

(1) is an officer in the Medical Service Corps of the Army or Navy or a biomedical sciences officer in the Air Force;

(2) is designated as a psychologist; and

(3) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology.

(d) NONPHYSICIAN HEALTH CARE PROVIDERS.—The Secretary concerned may authorize the payment of special pay at the rates specified in subsection (b) to an officer who—

(1) is an officer in the Medical Services Corps of the Army or Navy, a biomedical sciences officer in the Air Force, an officer in the Army Medical Specialist Corps, an officer of the

Nurse Corps of the Army or Navy, an officer of the Air Force designated as a nurse, an officer of the Coast Guard or Coast Guard Reserve designated as a physician assistant, or an officer in the Regular or Reserve Corps of the Public Health Service;

(2) is a health care provider (other than a psychologist);

(3) has a postbaccalaureate degree; and

(4) is certified by a professional board in the officer's specialty.

(Added P.L. 100–140, § 2(a), Oct. 26, 1987, 101 Stat. 830, and amended P.L. 101–189, § 704, Nov. 29, 1989, 103 Stat. 1471; P.L. 101–510, § 618, Nov. 5, 1990, 104 Stat. 1579; P.L. 102–25, § 702(a)(2)(A), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 611, Oct. 23, 1992, 106 Stat. 2421; P.L. 104–106, § 617, Feb. 10, 1996, 110 Stat. 362; P.L. 104–201, § 614(b), Sept. 23, 1996, 110 Stat. 2544; P.L. 106–398, § 1 (§ 627), Oct. 30, 2000, 114 Stat. 1654A–153.)

§ 302d. Special pay: accession bonus for registered nurses

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a registered nurse and who, during the period beginning on November 29, 1989, and ending on December 31, 2001, executes a written agreement described in subsection (c) to accept a commission as an officer and remain on active duty for a period of not less than four years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $5,000.

(b) LIMITATION ON ELIGIBILITY FOR BONUS.—A person may not be paid a bonus under subsection (a) if—

(1) the person, in exchange for an agreement to accept an appointment as an officer, received financial assistance from the Department of Defense to pursue a baccalaureate degree; or

(2) the Secretary concerned determines that the person is not qualified to become and remain licensed as a registered nurse.

(c) AGREEMENT.—The agreement referred to in subsection (a) shall provide that, consistent with the needs of the uniformed service concerned, the person executing the agreement will be assigned to duty, for the period of obligated service covered by the agreement, as an officer of the Nurse Corps of the Army or Navy, an officer of the Air Force designated as a nurse, or an officer designated as a nurse in the commissioned corps of the Public Health Service.

(d) REPAYMENT.—(1) An officer who receives a payment under subsection (a) and who fails to become and remain licensed as a registered nurse during the period for which the payment is made shall refund to the United States an amount equal to the full amount of such payment.

(2) An officer who voluntarily terminates service on active duty before the end of the period agreed to be served under subsection (a) shall refund to the United States an amount that bears the same ratio to the amount paid to the officer as the unserved part of such period bears to the total period agreed to be served.

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

(4) 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.

(Added P.L. 101–189, § 705, Nov. 29, 1989, 103 Stat. 1471, and amended P.L. 101–510, §§ 613(a), 1484(d)(2), Nov. 5, 1990, 104 Stat. 1577, 1716; P.L. 102–484, § 612(g), Oct. 23, 1992, 106 Stat. 2421; P.L. 103–160, § 611(b), Nov. 30, 1993, 107 Stat. 1679; P.L. 103–337, § 612(b), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 612(b), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 612(b), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 612(b), Nov. 18, 1997, 111 Stat. 1786; P.L. 105–261, § 612(b), Oct. 16, 1998, 112 Stat. 2039; P.L. 106–65, § 612(b), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1 (§ 622(b)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 302e. Special pay: nurse anesthetists

(a) SPECIAL PAY AUTHORIZED.—(1) An officer described in subsection (b)(1) who, during the period beginning on November 29, 1989, and ending on December 31, 2001, executes a written agreement to remain on active duty for a period of one year or more may, upon the acceptance of the agreement by the Secretary concerned, be paid incentive special pay in an amount not to exceed $15,000 for any 12-month period.

(2) The Secretary concerned shall determine the amount of incentive special pay to be paid to an officer under paragraph (1). In determining that amount, the Secretary concerned shall consider the period of obligated service provided for in the agreement under that paragraph.

(b) COVERED OFFICERS.—(1) An officer referred to in subsection (a) is an officer of a uniformed service who—

(A) is an officer of the Nurse Corps of the Army or Navy, an officer of the Air Force designated as a nurse, or an officer designated as a nurse in the commissioned corps of the Public Health Service;

(B) is a qualified certified registered nurse anesthetist; and

(C) is on active duty under a call or order to active duty for a period of not less than one year.

(2) The Secretary of Defense may extend the special pay authorized under subsection (a) to officers of the armed forces who serve in a nursing specialty (other than as nurse anesthetists) that—

(A) is designated by the Secretary of the military department concerned as critical to meet requirements (whether such specialty is designated as critical to meet wartime or peacetime requirements); and

(B) requires postbaccalaureate education and training.

(c) TERMINATION OF AGREEMENT.—Under regulations prescribed by the Secretary of Defense, with respect to the Army, Navy, and Air Force, and the Secretary of Health and Human Services, with respect to the Public Health Service, the Secretary concerned may terminate an agreement entered into under subsection (a). Upon termination of an agreement, the entitlement of the officer to special pay under this section and the agreed upon commitment to active duty of the officer shall end. The officer may be required to refund that part of the special pay corresponding to the unserved period of active duty.

(d) PAYMENT.—Special pay payable to an officer under subsection (a) shall be paid annually at the beginning of the 12-month period for which the officer is to receive that payment.

(e) REPAYMENT.—(1) An officer who voluntarily terminates service on active duty before the end of the period agreed to be served under subsection (a) shall refund to the United States an amount that bears the same ratio to the amount paid to the officer as the unserved part of such period bears to the total period agreed to be served.

(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.

(Added P.L. 101–189, § 706, Nov. 29, 1989, 103 Stat. 1472, and amended P.L. 101–510, §§ 613(b), 614, 618(c)(1), 1484(d)(3), Nov. 5, 1990, 104 Stat. 1577, 1579, 1716; P.L. 102–25, § 702(a)(2)(B) and (b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 612(i), Oct. 23, 1992, 106 Stat. 2421; P.L. 103–160, § 611(c), Nov. 30, 1993, 107 Stat. 1679; P.L. 103–337, § 612(c), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 612(c), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 612(c), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 612(c), Nov. 18, 1997, 111 Stat. 1786; P.L. 105–261, § 612(c), Oct. 16, 1998, 112 Stat. 2039; P.L. 106–65, § 612(c), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1 (§§ 622(c), 626(b)), Oct. 30, 2000, 114 Stat. 1654A–151, 153.)

§ 302f. Special pay: reserve, recalled, or retained health care officers

(a) ELIGIBLE FOR SPECIAL PAY.—A health care officer described in subsection (b) shall be eligible for special pay under section 302, 302a, 302b, 302c, 302e, or 303 of this title (whichever applies) notwithstanding any requirement in those sections that—

(1) the call or order of the officer to active duty be for a period of not less than one year; or

(2) the officer execute a written agreement to remain on active duty for a period of not less than one year.

(b) HEALTH CARE OFFICERS DESCRIBED.—A health care officer referred to in subsection (a) is an officer of the armed forces who is otherwise eligible for special pay under section 302, 302a, 302b, 302c, 302e, or 303 of this title and who—

(1) is a reserve officer on active duty (other than for training) under a call or order to active duty for a period of more than 30 days but less than one year;

(2) is involuntarily retained on active duty under section 12305 of title 10, or is recalled to active duty under section 688 of title 10 for a period of more than 30 days; or

(3) voluntarily agrees to remain on active duty for a period of less than one year at a time when—

(A) officers are involuntarily retained on active duty under section 12305 of title 10; or

(B) the Secretary of Defense determines (pursuant to regulations prescribed by the Secretary) that special circumstances justify the payment of special pay under this section.

(c) MONTHLY PAYMENTS.—Payment of special pay pursuant to this section may be made on a monthly basis. The officer shall refund any amount received under this section in excess of the amount that corresponds to the actual period of active duty served by the officer.

(d) SPECIAL RULE FOR RESERVE MEDICAL AND DENTAL OFFICERS.—While a reserve medical or dental officer receives a special pay under section 302 or 302b of this title by reason of subsection (a), the officer shall not be entitled to special pay under section 302(h) or 302b(h) of this title.

(Added P.L. 102–190, § 634(a), Dec. 5, 1991, 105 Stat. 1381, and amended P.L. 104–106, § 1501(d)(4)(A), Feb. 10, 1996, 110 Stat. 500; P.L. 106–398, § 1 (§ 625(b)), Oct. 30, 2000, 114 Stat. 1654A–153.)

§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties

(a) SPECIAL PAY AUTHORIZED.—An officer of a reserve component of the armed forces described in subsection (b) who executes a written agreement under which the officer agrees to serve in the Selected Reserve of an armed force for a period of not less than one year nor more than three years, beginning on the date the officer accepts the award of special pay under this section, may be paid special pay at an annual rate not to exceed $10,000.

(b) ELIGIBLE OFFICERS.—An officer referred to in subsection (a) is an officer in a health care profession who is qualified in a specialty designated by regulations as a critically short wartime specialty.

(c) TIME FOR PAYMENT.—Special pay under this section shall be paid annually at the beginning of each twelve-month period for which the officer has agreed to serve.

(d) REFUND REQUIREMENT.—An officer who voluntarily terminates service in the Selected Reserve of an armed force before the end of the period for which a payment was made to such officer under this section shall refund to the United States the full amount of the payment made for the period on which the payment was based.

(e) INAPPLICABILITY 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 receiving special pay under the agreement from the debt arising under the agreement.

(f) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after December 31, 2001.

(Added P.L. 104–106, § 614(a)(1), Feb. 10, 1996, 110 Stat. 360, and amended P.L. 104–201, § 611(a), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 611(a), Nov. 18, 1997, 111 Stat. 1785; P.L. 105–261, § 611, Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, § 611(a), Oct. 5, 1999, 113 Stat. 649; P.L. 106–398, § 1 (§ 621(a)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 302h. Special pay: accession bonus for dental officers

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a graduate of an accredited dental school and who, during the period beginning on the date of the enactment of this section, and ending on September 30, 2002, executes a written agreement described in subsection (c) to accept a commission as an officer of the armed forces and remain on active duty for a period of not less than four

years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $30,000.

(b) LIMITATION ON ELIGIBILITY FOR BONUS.—A person may not be paid a bonus under subsection (a) if—

(1) the person, in exchange for an agreement to accept an appointment as an officer, received financial assistance from the Department of Defense to pursue a course of study in dentistry; or

(2) the Secretary concerned determines that the person is not qualified to become and remain certified and licensed as a dentist.

(c) AGREEMENT.—The agreement referred to in subsection (a) shall provide that, consistent with the needs of the armed service concerned, the person executing the agreement will be assigned to duty, for the period of obligated service covered by the agreement, as an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer.

(d) REPAYMENT.—(1) An officer who receives a payment under subsection (a) and who fails to become and remain certified or licensed as a dentist during the period for which the payment is made shall refund to the United States an amount equal to the full amount of such payment.

(2) An officer who voluntarily terminates service on active duty before the end of the period agreed to be served under subsection (a) shall refund to the United States an amount that bears the same ratio to the amount paid to the officer as the unserved part of such period bears to the total period agreed to be served.

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

(4) 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 the date of the enactment of this section.

(Added P.L. 104–201, § 615(c)(1), Sept. 23, 1996, 110 Stat. 2545.)

§ 302i. Special pay: pharmacy officers

(a) ARMY, NAVY, AND AIR FORCE PHARMACY OFFICERS.—Under regulations prescribed pursuant to section 303a of this title, the Secretary of the military department concerned may, subject to subsection (c), pay special pay at the rates specified in subsection (d) to an officer who—

(1) is a pharmacy officer in the Medical Service Corps of the Army or Navy or the Biomedical Sciences Corps of the Air Force; and

(2) is on active duty under a call or order to active duty for a period of not less than one year.

(b) PUBLIC HEALTH SERVICE CORPS.—Subject to subsection (c), the Secretary of Health and Human Services may pay special pay at the rates specified in subsection (d) to an officer who—

(1) is an officer in the Regular or Reserve Corps of the Public Health Service and is designated as a pharmacy officer; and

(2) is on active duty under a call or order to active duty for a period of not less than one year.

(c) LIMITATION.—Special pay may not be paid under this section to an officer serving in a pay grade above pay grade O–6.

(d) RATE OF SPECIAL PAY.—The rate of special pay paid to an officer under subsection (a) or (b) is as follows:

(1) $3,000 per year, if the officer is undergoing pharmacy internship training or has less than 3 years of creditable service.

(2) $7,000 per year, if the officer has at least 3 but less than 6 years of creditable service and is not undergoing pharmacy internship training.

(3) $7,000 per year, if the officer has at least 6 but less than 8 years of creditable service.

(4) $12,000 per year, if the officer has at least 8 but less than 12 years of creditable service.

(5) $10,000 per year, if the officer has at least 12 but less than 14 years of creditable service.

(6) $9,000 per year, if the officer has at least 14 but less than 18 years of creditable service.

(7) $8,000 per year, if the officer has 18 or more years of creditable service.

(Added P.L. 106–398, § 1 (§ 628(a)), Oct. 30, 2000, 114 Stat. 1654A–154.)

§ 302j. Special pay: accession bonus for pharmacy officers

(a) ACCESSION BONUS AUTHORIZED.—A person who is a graduate of an accredited pharmacy school and who, during the period beginning on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and ending on September 30, 2004, executes a written agreement described in subsection (c) to accept a commission as an officer of a uniformed service and remain on active duty for a period of not less than 4 years may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(b) LIMITATION ON AMOUNT OF BONUS.—The amount of an accession bonus under subsection (a) may not exceed $30,000.

(c) LIMITATION ON ELIGIBILITY FOR BONUS.—A person may not be paid a bonus under subsection (a) if—

(1) the person, in exchange for an agreement to accept an appointment as a warrant or commissioned officer, received financial assistance from the Department of Defense or the Department of Health and Human Services to pursue a course of study in pharmacy; or

(2) the Secretary concerned determines that the person is not qualified to become and remain licensed as a pharmacist.

(d) AGREEMENT.—The agreement referred to in subsection (a) shall provide that, consistent with the needs of the uniformed serv-

ice concerned, the person executing the agreement shall be assigned to duty, for the period of obligated service covered by the agreement, as a pharmacy officer in the Medical Service Corps of the Army or Navy, a biomedical sciences officer in the Air Force designated as a pharmacy officer, or a pharmacy officer of the Public Health Service.

(e) REPAYMENT.—(1) An officer who receives a payment under subsection (a) and who fails to become and remain licensed as a pharmacist during the period for which the payment is made shall refund to the United States an amount equal to the full amount of such payment.

(2) An officer who voluntarily terminates service on active duty before the end of the period agreed to be served under subsection (a) shall refund to the United States an amount that bears the same ratio to the amount paid to the officer as the unserved part of such period bears to the total period agreed to be served.

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

(4) A discharge in bankruptcy under title 11 that is entered less than 5 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 the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

(Added P.L. 106–398, § 1 (§ 628(a)), Oct. 30, 2000, 114 Stat. 1654A–154.)

§ 303. Special pay: veterinarians

(a) MONTHY SPECIAL PAY.—Each of the following officers is entitled to special pay at the rate of $100 a month for each month of active duty:

(1) A commissioned officer—

(A) of the Regular Army who is in the Veterinary Corps;

(B) of the Regular Air Force who is an officer in the Biomedical Sciences Corps and holds a degree in veterinary medicine; or

(C) who is a veterinary officer of the Regular Corps of the Public Health Service.

(2) A commissioned officer—

(A) of a reserve component of the Army who is in the Veterinary Corps of the Army;

(B) of a reserve component of the Air Force, of the Army or the Air Force without specification of component, or of the National Guard, who—

(i) is designated as a veterinary officer; or

(ii) is an officer in the Biomedical Sciences Corps of the Air Force and holds a degree in veterinary medicine; or

(C) who is a veterinary officer of the Reserve Corps of the Public Health Service,

who is on active duty as a result of a call or order to active duty for a period of at least one year.

(3) A general officer of the Army or the Air Force appointed, from any of the categories named in clause (1) or (2), in the Army, the Air Force, or the National Guard, as the case may be.

(b) ADDITIONAL SPECIAL PAY FOR BOARD CERTIFICATION.—A commissioned officer entitled to special pay under subsection (a) who has been certified as a Diplomate in a specialty recognized by the American Veterinarian Medical Association is entitled to special pay (in addition to the special pay under subsection (a)) at the same rate as is provided under section 302c(b) of this title for an officer referred to in that section who has the same number of years of creditable service as the commissioned officer.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 465; P.L. 88–2, § 5, Mar. 28, 1963, 77 Stat. 4; P.L. 90–40, § 5, June 30, 1967, 81 Stat. 105; P.L. 92–129, § 104, Sept. 28, 1971, 85 Stat. 355; P.L. 93–64, § 203, July 9, 1973, 87 Stat. 149; P.L. 95–114, § 3, Sept. 30, 1977, 91 Stat. 1046; P.L. 95–485, § 801(b), Oct. 20, 1978, 92 Stat. 1619; P.L. 96–284, § 4(c), June 28, 1980, 94 Stat. 591; P.L. 100–26, § 8(d)(3), Apr. 21, 1987, 101 Stat. 285; P.L. 100–180, § 1232, Dec. 4, 1987, 101 Stat. 1161, P.L. 102–25, § 702(b)(2), April 6, 1991, 105 Stat. 117; P.L. 106–65, § 616(a), Oct. 5, 1999, 113 Stat. 652; P.L. 106–398, § 1 (§ 629), Oct. 30, 2000, 114 Stat. 1654A–155.)

§ 303a. Special pay: health professionals; general provisions

(a) The Secretary of Defense, with respect to the Army, Navy, and Air Force, and the Secretary of Health and Human Services, with respect to the Public Health Service, shall prescribe regulations for the administration of sections 301d, 302 through 302j, and 303 of this title.

(b)(1) Except as provided in paragraph (2) or as otherwise provided under a provision of this chapter, a commissioned officer in the Regular or Reserve Corps of the Public Health Service is entitled to special pay under a provision of this chapter in the same amounts, and under the same terms and conditions, as a commissioned officer of the armed forces is entitled to special pay under that provision.

(2) A commissioned medical officer in the Regular or Reserve Corps of the Public Health Service (other than an officer serving in the Indian Health Service) may not receive additional special pay under section 302(a)(4) of this title for any period during which the officer is providing obligated service under the following provisions of law:

(A) Section 338B of the Public Health Service Act (42 U.S.C. 254l–1).

(B) Section 225(e) of the Public Health Service Act, as that section was in effect before October 1, 1977.

(C) Section 752 of the Public Health Service Act, as that section was in effect between October 1, 1977, and August 13, 1981.

(c) Special pay authorized under sections 301d, 302 through 302j, and 303 of this title is in addition to any other pay or allowance to which an officer is entitled. The amount of special pay to which an officer is entitled under any of such sections may not be included in computing the amount of any increase in pay authorized by any other provision of this title or in computing retired pay, separation pay, severance pay, or readjustment pay.

(d) The Secretary of Defense shall conduct a review every two years of the special pay for health professionals authorized by sections 301d, 302 throug404ah 302j, and 303 of this title.

(Added P.L. 96–284, § 5(a), June 28, 1980, 94 Stat. 592, and amended P.L. 96–513, § 506(6), Dec. 12, 1980, 94 Stat. 2919; P.L. 100–140, § 2(b)(1), Oct. 26, 1987, 101 Stat. 831; P.L. 101–189, §§ 705(b), 706(b), Nov. 29, 1989, 103 Stat. 1472, 1473; P.L. 101–510, §§ 611(d), 1484(c), 1322(c)(2), Nov. 5, 1990, 104 Stat. 1577, 1672, 1716; P.L. 102–484, § 1054(a)(3), Oct. 23, 1992, 106 Stat. 2502; P.L. 104–106, § 614(b), Feb. 10, 1996, 110 Stat. 361; P.L. 104–201, § 615(c)(3), Sept. 23, 1996, 110 Stat. 2546; P.L. 106–398, § 1 (§§ 628(b), 634), Oct. 30, 2000, 114 Stat. 1654A–155, 159.)

§ 303b. Waiver of board certification requirements

(a) CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.—A member of the armed forces described in subsection (b) who completes the board certification or recertification requirements specified in section 302(a)(5), 302b(a)(5), 302c(c)(3), or 302c(d)(4) of this title before the end of the period established for the member in subsection (c) shall be paid special pay under the applicable section for active duty performed during the period beginning on the date on which the member was assigned to duty in support of a contingency operation and ending on the date of that certification or recertification if the Secretary of Defense determines that the member was unable to schedule or complete that certification or recertification earlier because of that duty.

(b) ELIGIBLE MEMBERS DESCRIBED.—A member of the armed forces referred to in subsection (a) is a member who—

(1) is a medical or dental officer or a nonphysician health care provider;

(2) has completed any required residency training; and

(3) was, except for the board certification requirement, otherwise eligible for special pay under section 302(a)(5), 302b(a)(5), 302c(c)(3), or 302c(d)(4) of this title during a duty assignment in support of a contingency operation.

(c) PERIOD FOR CERTIFICATION.—The period referred to in subsection (a) for completion of board certification or recertification requirements with respect to a member of the armed forces is the 180-day period (extended for such additional time as the Secretary of Defense determines to be appropriate) beginning on the date on which the member is released from the duty to which the member was assigned in support of a contingency operation.

(Added P.L. 102–190, § 635(a), Dec. 5, 1991, 105 Stat. 1382.)

§ 304. Special pay: diving duty

(a) Under regulations prescribed by the Secretary concerned, a member of a uniformed service who is entitled to basic pay is entitled to special pay, in the amount set forth in subsection (b), for periods during which the member—

(1) is assigned by orders to the duty of diving;

(2) is required to maintain proficiency as a diver by frequent and regular dives; and

(3) either—

(A) actually performs diving duty while serving in an assignment for which diving is a primary duty; or

(B) meets the requirements to maintain proficiency as described in paragraph (2) while serving in an assignment that includes diving duty other than as a primary duty.

(b) Special pay payable under subsection (a) shall be paid at a rate of not more than $240 a month, in the case of an officer, and

at a rate of not more than $340 a month, in the case of an enlisted member.

(c) If, in addition to diving duty, a member is assigned by orders to one or more hazardous duties described in section 301 of this title, the member may be paid, for the same period of service, special pay under this section and incentive pay under such section 301 for each hazardous duty for which the member is qualified.

(d)(1) Under regulations prescribed by the Secretary concerned and to the extent provided for by appropriations, when a member of the National Guard or a reserve component of a uniformed service who is entitled to compensation under section 206 of this title performs diving duty, pursuant to orders, such member is entitled to an increase in compensation equal to 1/30 of the monthly special pay prescribed by the Secretary concerned for the performance of diving duty by a member of comparable diving classification who is entitled to basic pay under section 204 of this title. Such member is entitled to the increase—

(A) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday; or

(B) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe under section 206(a) of this title.

(2) This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

(e) In time of war, the President may suspend the payment of diving duty pay.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 465; P.L. 97–60, § 115, Oct. 14, 1981, 95 Stat. 995; P.L. 100–180, § 624(a), Dec. 4, 1987, 101 Stat. 1103, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 105–261, § 616(a), Oct. 16, 1998, 112 Stat. 2041; P.L. 106–65, § 617, Oct. 5, 1999, 113 Stat. 652.)

§ 305. Special pay: hardship duty pay

(a) SPECIAL PAY AUTHORIZED.—A member of a uniformed service who is entitled to basic pay may be paid special pay under this section at a monthly rate not to exceed $300 while the member is performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the provision of hardship duty pay under subsection (a), including the specific monthly rates at which the special pay will be available.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 465; P.L. 88–132, § 12(a), Oct. 2, 1963, 77 Stat. 217; P.L. 90–623; § 3(4), Oct. 22, 1968, 82 Stat. 1314; P.L. 95–485, § 804(b)(1), Oct. 20, 1978, 92 Stat. 1620, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 105–85, § 619(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1789, 1790; P.L. 105–261, § 617(a), (c)(1), Oct. 16, 1998, 112 Stat. 2041.)

§ 305a. Special pay: career sea pay

(a) AVAILABILITY OF SPECIAL PAY.—A member of a uniformed service who is entitled to basic pay is also entitled, while on sea duty, to special pay at the applicable rate under subsection (b).

(b) RATES; MAXIMUM.—The Secretary concerned shall prescribe the monthly rates for special pay applicable to members of each

armed force under the Secretary's jurisdiction. No monthly rate may exceed $750.

(c) PREMIUM.—A member of a uniformed service entitled to career sea pay under this section who has served 36 consecutive months of sea duty is also entitled to a career sea pay premium for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty served by such member. The monthly amount of the premium shall be prescribed by the Secretary concerned, but may not exceed $350.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the administration of this section for the armed force or armed forces under the jurisdiction of the Secretary. The entitlements under this section shall be subject to the regulations.

(e) DEFINITION OF SEA DUTY.—(1) In this section, the term "sea duty" means duty performed by a member—

(A) while permanently or temporarily assigned to a ship and—

(i) while serving on a ship the primary mission of which is accomplished while under way;

(ii) while serving as a member of the off-crew of a two-crewed submarine; or

(iii) while serving as a member of a tender-class ship (with the hull classification of submarine or destroyer); or

(B) while permanently or temporarily assigned to a ship and while serving on a ship the primary mission of which is normally accomplished while in port, but only during a period that the ship is away from its homeport.

(2) The Secretary concerned may designate duty performed by a member while serving on a ship the primary mission of which is accomplished either while under way or in port as "sea duty" for purposes of this section, even though the duty is performed while the member is permanently or temporarily assigned to a ship-based staff or other unit not covered by paragraph (1).

(3) For the purpose of determining the years of sea duty with which a member may be credited for purposes of this section, the term "sea duty" also includes duty performed after December 31, 1988, by a member while permanently or temporarily assigned to a ship or ship-based staff and while serving on a ship on which the member would be entitled, during a period that the ship is away from its homeport, to receive sea pay by reason of paragraph (1)(B).

(4) A ship shall be considered to be away from its homeport for purposes of this subsection when it is—

(A) at sea; or

(B) in a port that is more than 50 miles from its homeport.

(Added P.L. 95–485, § 804(a)(1), Oct. 20, 1978, 92 Stat. 1620, and amended P.L. 96–343, § 3(a), Sept. 8, 1980, 94 Stat. 1124; P.L. 96–579, § 4(a), Dec. 23, 1980, 94 Stat. 3364; P.L. 97–60, § 116, Oct. 14, 1981, 95 Stat. 996; P.L. 97–295, § 3(1), Oct. 12, 1982, 96 Stat. 1303; P.L. 98–525, § 623(a), Oct. 19, 1984, 98 Stat. 2541; P.L. 99–145, § 634(a), Nov. 8, 1985, 99 Stat. 647; P.L. 100–26, § 8(e)(5), Apr. 21, 1987, 101 Stat. 286; P.L. 100–180; § 621(a)–(c), Dec. 4, 1987, 101 Stat. 1097, 1099; P.L. 100–224, § 5(a)(1), Dec. 30, 1987, 101 Stat. 1538; P.L. 100–456, § 1233(b)(1), Sept. 29, 1988, 102 Stat. 2057; P.L. 101–189, § 653(b), Nov. 29, 1989, 103 Stat. 1462, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 1111(d)(2), Dec. 5, 1991, 105 Stat. 1492; P.L. 104–106, § 618, Feb. 10, 1996, 110 Stat. 362; P.L. 105–85, § 620, Nov. 18, 1997, 111 Stat. 1790; P.L. 106–398, § 1 (§ 630(a), (b)), Oct. 30, 2000, 114 Stat. 1654A–156.)

§ 306. Special pay: officers holding positions of unusual responsibility and of critical nature

(a) The Secretary concerned may designate positions of unusual responsibility which are of a critical nature to an armed force under his jurisdiction and may pay special pay, in addition to other pay prescribed by law, to an officer of an armed force who is entitled to the basic pay of pay grade O–6 or below and who is performing the duties of such a position, at the following monthy rates:

Pay Grade	Monthly Rate
O–6	$150
O–5	100
O–4 and below	50

(b) The Secretary concerned shall prescribe the criteria and circumstances under which officers of an armed force under his jurisdiction are eligible for special pay under this section and, when he considers it necessary, may abolish that special pay.

(c) Not more than 5 percent of the number of officers on active duty (other than for training) in an armed force in each of the pay grades O–3 and below, and not more than 10 percent of the number of officers on active duty in an armed force in pay grade O–4, O–5, or O–6, may be paid special pay under this section.

(d) This section shall be administered under 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 the Coast Guard is not operating as a service in the Navy.

(e) This section does not apply to a person who is entitled to special pay under section 302, 302a, 302b, or 303 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 466; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 96–284, § 6, June 28, 1980, 94 Stat. 593; P.L. 96–470, § 202(b), Oct. 19, 1980, 94 Stat. 2242; P.L. 97–322, § 116, Oct. 15, 1982, 96 Stat. 1586; P.L. 101–510, § 1322(c)(3), Nov. 5, 1990, 104 Stat. 1672; P.L. 102–587, § 5205, Nov. 4, 1992, 106 Stat. 5074.)

§ 306a. Special pay: members assigned to international military headquarters

Not more than nine members of the armed forces, including members detailed to international military headquarters, may be paid pay and allowances at rates referred to in section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)).

(Added P.L. 98–525, § 1402(b)(1), Oct. 19, 1984, 98 Stat. 2621.)

§ 307. Special pay: special duty assignment pay for enlisted members

(a) An enlisted member who is entitled to basic pay and is performing duties which have been designated under subsection (b) as extremely difficult or as involving an unusual degree of responsibility in a military skill may, in addition to other pay or allowances to which he is entitled, be paid special duty assignment pay at a monthly rate not to exceed $600.

(b) The Secretary concerned shall determine which enlisted members under his jurisdiction are to be paid special duty assignment pay under subsection (a). He shall also designate those skills within each armed force under his jurisdiction for which special duty assignment pay is authorized and shall prescribe the criteria under which members of that armed force are eligible for special duty assignment pay in each skill. He may increase, decrease, or abolish such pay for any skill.

(c) This section shall be administered under 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 the Coast Guard is not operating as a service in the Navy.

(d)(1) Under regulations prescribed by the Secretary concerned and to the extent provided for by appropriations, when an enlisted member of the National Guard or a reserve component of a uniformed service who is entitled to compensation under section 206 of this title performs duty for which a member described in subsection (a) is entitled to special pay under such subsection, the member of the National Guard or reserve component is entitled to an increase in compensation equal to 1/30 of the monthly special duty assignment pay prescribed by the Secretary concerned for the performance of that same duty by members described in subsection (a).

(2) A member of the National Guard or a reserve component entitled to an increase in compensation under paragraph (1) is entitled to the increase—

(A) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday; or

(B) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe under section 206(a) of this title.

(3) This subsection does not apply to a member of the National Guard or a reserve component who is entitled to basic pay under section 204 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 467; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 98–525, § 623(b)(1), Oct. 19, 1984, 98 Stat. 2541, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 619(a), Feb. 10, 1996, 110 Stat. 363; P.L. 106–398, § 1 (§§ 631, 632(a)), Oct. 30, 2000, 114 Stat. 1654A–156.)

§ 308. Special pay: reenlistment bonus

(a)(1) A member of a uniformed service who—

(A) has completed at least 17 months of continuous active duty (other than for training) but not more than fourteen years of active duty;

(B) is qualified in a military skill designated as critical 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;

(C) is not receiving special pay under section 312a of this title; and

(D) reenlists or voluntarily extends the member's enlistment for a period of at least three years—

(i) in a regular component of the service concerned; or

(ii) in a reserve component of the service concerned, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10);

may be paid a bonus as provided in paragraph (2).

(2) The bonus to be paid under paragraph (1) may not exceed the lesser of the following amounts:

(A) The amount equal to the product of—

(i) 15 times the monthly rate of basic pay to which the member was entitled at the time of the discharge or release of the member; and

(ii) the number of years (or the monthly fractions thereof) of the term of reenlistment or extension of enlistment not to exceed six.

(B) $60,000.

(3) Any portion of a term of reenlistment or extension of enlistment of a member that, when added to the total years of service of the member at the time of discharge or release, exceeds 16 years may not be used in computing a bonus under paragraph (2)(A).

(4) Notwithstanding paragraph (1)(B), a member who agrees to train and reenlist for service in a military skill which, at the time of that agreement, is designated as critical, may be paid the bonus approved for that skill, at the rate in effect at the time of agreement, upon completion of training and qualification in that skill, if otherwise qualified under this subsection and even it that skill is no longer designated as critical at the time the member becomes eligible for payment of the bonus.

(b) Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount.

(c) For the purpose of computing the reenlistment bonus in the case of an officer with prior enlisted service who may be entitled to a bonus under subsection (a), the monthly basic pay of the grade in which he is enlisted, computed in accordance with his years of service computed under section 205 of this title, shall be used instead of the monthly basic pay to which he was entitled at the time of his release from active duty as an officer.

(d)(1) A member who voluntarily or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section or a member who is not technically qualified in the skill for which a bonus was paid to him under this section (other than a member who is not qualified because of injury, illness, or other impairment not the result of his own misconduct) shall refund that percentage of the bonus that the unexpired part of his additional obligated service is of the total reenlistment or extension period for which the bonus was paid.

(2) If a refund is not required under paragraph (1) in the case of a member who fails to complete a term of enlistment, the Secretary of Defense with respect to the armed forces under the Secretary's jurisdiction, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may decline to make any payment to a bonus installment under this section that is due to be paid to the member after

the date on which the member fails to complete the term of enlistment for which the bonus is being paid. The Secretary of Defense and the Secretary of Transportation may prescribe the circumstances under which bonus installments may be terminated under this paragraph.

(e) For the purposes of determining the eligibility of a member for a bonus under this section and of computing the amount of that bonus—

(1) any period of enlistment (including any extension of an enlistment) (A) that is incurred by the member for the purpose of continuing to qualify for continuous submarine duty incentive pay under section 301c of this title, and (B) for which no bonus is otherwise payable; or

(2) any unserved period of two years or less of an extension of an enlistment for which no bonus has been paid or for which no bonus is otherwise payable under this section,

may, under regulations prescribed by the Secretary concerned, be considered as part of an immediately subsequent term of reenlistment (or as part of an immediately subsequent voluntary extension of an enlistment).

(f) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(g) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty reenlistment, in the armed forces entered into after December 31, 2001.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 467; P.L. 89–132, § 3, Aug. 21, 1965, 79 Stat. 547; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 93–277, § 2(1), May 10, 1974, 88 Stat. 119; P.L. 95–57, § 1, June 29, 1977, 91 Stat. 253; P.L. 95–485, § 802(a)(1), (b), Oct. 20, 1978, 92 Stat. 1619; P.L. 96–342, § 804(a), Sept. 8, 1980, 94 Stat. 1092; P.L. 96–579, § 3(f), Dec. 23, 1980, 94 Stat. 3364; P.L. 97–60, § 117(a), Oct. 14, 1981, 95 Stat. 996; P.L. 97–276, § 131, Oct. 2, 1982, 96 Stat. 1197; P.L. 97–377, § 101(c), Dec. 21, 1982, 96 Stat. 1865; P.L. 98–14, § 1, Mar. 30, 1983, 97 Stat. 55; P.L. 98–525, § 621, Oct. 19, 1984, 98 Stat. 2540; P.L. 99–145, § 631(a), Nov. 8, 1985, 99 Stat. 643; P.L. 100–180, §§ 625(a), 626(a), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, § 611, Nov. 29, 1989, 103 Stat. 1445; P.L. 101–510, § 615, Nov. 5, 1990, 104 Stat. 1578; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 612(a), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 613(b), Nov. 30, 1993, 107 Stat. 1681; P.L. 103–337, § 613(b), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 613(b), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 613(b), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, § 613(b), Nov. 18, 1997, 111 Stat. 1786; P.L. 105–261, §§ 613(b), 618, 619, Oct. 16, 1998, 112 Stat. 2039, 2042; P.L. 106–65, §§ 613(b), 618, Oct. 5, 1999, 113 Stat. 650, 652; P.L. 106–398, § 1 (§ 623(b)), Oct. 30, 2000, 114 Stat. 1654A–152.)

[§ 308a. Repealed. P.L. 106–398, § 1 (§ 624(b)(1)), 114 Stat. 1654A–153.]

§ 308b. Special pay: reenlistment bonus for members of the Selected Reserve

(a) AUTHORITY AND ELIGIBILITY REQUIREMENTS.—An enlisted member of a reserve component who—

(1) has completed less than 14 years of total military service; and

(2) reenlists or voluntarily extends his enlistment for a period of three years or for a period of six years in a designated military skill, or in a designated unit, as determined by the Secretary concerned, in the Selected Reserve of the Ready Reserve of an armed force;

may be paid a bonus as provided in subsection (b).

(b) BONUS AMOUNTS; PAYMENT.—(1) The amount of a bonus under this section may not exceed—

(A) $5,000, in the case of a member who reenlists or extends an enlistment for a period of six years;

(B) $2,500, in the case of a member who, having never received a bonus under this section, reenlists or extends an enlistment for a period of three years; and

(C) $2,000, in the case of a member who, having received a bonus under this section for a previous three-year reenlistment or extension of an enlistment, reenlists or extends the enlistment for an additional period of three years.

(2) Any bonus payable under this section shall be disbursed in one initial payment of an amount not to exceed one-half of the total amount of the bonus and subsequent periodic partial payments of the balance of the bonus. The Secretary concerned shall prescribe the amount of each partial payment and the schedule for making the partial payments.

(c) CONDITION ON ELIGIBILITY; LIMITATION ON NUMBER OF BONUSES.—(1) To be eligible for a second bonus under this section in the amount specified in subsection (b)(1)(C), a member must—

(A) enter into the subsequent reenlistment or extension of an enlistment for a period of three years not later than the date on which the enlistment or extension for which the first bonus was paid would expire; and

(B) still satisfy the designated skill or unit requirements required under subsection (a)(2).

(2) A member may not be paid more than one six-year bonus or two three-year bonuses under this section.

(d) REPAYMENT OF BONUS.—A member who receives a bonus under this section and who fails, during the period for which the bonus was paid, to serve satisfactorily in the element of the Selected Reserve of the Ready Reserve with respect to which the bonus was paid shall refund to the United States an amount that bears the same ratio to the amount of the bonus paid to the member as the period that the member failed to serve satisfactorily bears to the total period for which the bonus was paid.

(e) REGULATIONS.—This section shall be administered under 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.

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any enlisted member who, after December 31, 2001, reenlists or voluntarily extends his enlistment in a reserve component.

(Added P.L. 95–79, § 403(a)(1), July 30, 1977, 91 Stat. 330, and amended P.L. 95–485, § 403, Oct. 20, 1978, 92 Stat. 1614; P.L. 96–342, § 805(b), Sept. 8, 1980, 94 Stat. 1095; P.L. 97–295, § 3(2), Oct. 12, 1982, 96 Stat. 1303; P.L. 99–145, § 643(a), Nov. 8, 1985, 99 Stat. 652; P.L. 100–180, § 626(b), Dec. 4. 1987, 101 Stat. 1104; P.L. 101–189; §§ 613, 652, Nov. 29, 1989, 103 Stat. 1446, 1461; P.L. 101–510, § 1322(c)(4), Nov. 5, 1990, 104 Stat. 1672; P.L. 102–484, § 612(d), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 612(a), Nov. 30, 1993, 107 Stat. 1680; P.L. 103–337, § 611(a), Oct. 5, 1994, 108 Stat. 2782; P.L. 104–106, § 611(a), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(b), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, §§ 611(b), 621, Nov. 18, 1997, 111 Stat. 1785, 1790; P.L. 105–261, § 611(b), Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, § 611(b), Oct. 5, 1999, 113 Stat. 649; P.L. 106–398, § 1 (§ 621(b)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 308c. Special pay: bonus for enlistment in the Selected Reserve

(a) Any person who enlists in the Selected Reserve of the Ready Reserve of an armed force, is a graduate of a secondary school, and has never previously served in an armed force may be paid a bonus as provided in subsection (b).

(b) The amount and method of payment of a bonus to be paid under subsection (a) shall be determined in accordance with regulations prescribed under subsection (c), except that the amount of such bonus may not exceed $8,000 and—

(1) an amount not to exceed one-half of the bonus may be paid upon completion of the initial active duty for training of such person; and

(2) the remainder of the bonus may be paid in periodic installments or in a lump sum, as determined by the Secretary concerned.

(c) This section shall be administered under 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.

(d) A member who fails to participate satisfactorily in training with his unit during a term of enlistment for which a bonus has been paid to him under this section shall refund an amount which bears the same ratio to the amount of the bonus which has been paid to him as the unexpired part of such term of enlistment bears to the total length of such term of enlistment.

(e) No bonus may be paid under this section to any enlisted member who, after December 31, 2001, enlists in the Selected Reserve of the Ready Reserve of an armed force.

(f) The total amount of expenditures under this section may not exceed $37,024,000 during fiscal year 1994.

(Added P.L. 95–485, § 404(a), Oct. 20, 1978, 92 Stat. 1614, and amended P.L. 96–342, § 805(b), Sept. 8, 1980, 94 Stat. 1095; P.L. 97–22, § 11(b)(1), July 10, 1981, 95 Stat. 138; P.L. 99–145, § 642, Nov. 8, 1985, 99 Stat. 652; P.L. 100–180, § 626(b), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, §§ 613, 652(b), Nov. 29, 1989, 103 Stat. 1446, 1461; P.L. 101–510, § 1322(c)(5), Nov. 5, 1990, 104 Stat. 1672; P.L. 102–484, § 612(d), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 612(b), Nov. 30, 1993, 107 Stat. 1680; P.L. 103–337, § 611(b), Oct. 5, 1994, 108 Stat. 2782; P.L. 104–106, § 611(b), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(c), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 611(c), Nov. 18, 1997, 111 Stat. 1785; P.L. 105–261, § 611(c), Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, §§ 611(c), 620, Oct. 5, 1999, 113 Stat. 649, 653; P.L. 106–398, § 1 (§ 621(c)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 308d. Special pay: enlisted members of the Selected Reserve assigned to certain high priority units

(a) 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, an enlisted member who is assigned to a high priority unit of the Selected Reserve of the Ready Reserve of an armed force, as designated under subsection (b), and who performs inactive duty for training for compensation under section 206 of this title with such unit may be paid compensation, in addition to the compensation to which the member is otherwise entitled, in an amount not to exceed $10 for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least four hours, including any such instruction or duty performed on a Sunday or holiday.

(b) The Secretary concerned may designate a unit, for the purposes of subsection (a) and under such terms and conditions as the Secretary considers appropriate, as a high priority unit if that unit has experienced, or reasonably might be expected to experience, critical personnel shortages. The Secretary may vacate a designation made under this subsection at any time he considers the designation no longer necessary.

(c) Additional compensation may not be paid under this section for inactive duty performed after December 31, 2001.

(Added P.L. 101–189, § 505, Nov. 29, 1989, 103 Stat. 1437, and amended P.L. 102–190, § 612(b), Dec. 5, 1991, 105 Stat. 1376; P.L. 102–484, § 612(d), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 613(d), Nov. 30, 1993, 107 Stat. 1681; P.L. 103–337, § 613(d), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 613(d), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(d), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 611(d), Nov. 18, 1997, 111 Stat. 1785; P.L. 105–261, § 611(d), Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, §§ 611(d), 621, Oct. 5, 1999, 113 Stat. 650, 653; P.L. 106–398, § 1 (§ 621(d)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 308e. Special pay: bonus for reserve affiliation agreement

(a) The Secretary concerned may pay a bonus for reserve affiliation to any person—

(1) who—

(A) is serving on active duty, has 180 days or less remaining of his active duty obligation, and upon discharge or release from active duty upon the completion of such active duty obligation will have a reserve service obligation under section 651 of title 10 [1] or under section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)); or

(B) has served on active duty for any period of time, was discharged or released from such active duty under honorable conditions, and is serving a period of reserve service obligation under section 651 of title 10 or section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)); and

(2) who meets the requirements of subsection (b).

(b) To be eligible to receive a bonus for reserve affiliation under this section, a person must—

(1) be eligible for reenlistment or for an extension of his active duty service;

(2) have completed satisfactorily any term of enlistment or period of obligated active duty service;

(3) hold and be qualified in a military specialty designated for purposes of this section in the regulations prescribed under subsection (f);

(4) have a grade for which there is a vacancy in the reserve component in which the person is to become a member;

(5) not be affiliated in a reserve component to become a Reserve, Army National Guard, or Air National Guard technician;

(6) enter into a written agreement with the Secretary concerned to serve as a member of the Selected Reserve of the Ready Reserve of an armed force for the period of obligated re-

[1] Section 651 of title 10 establishes a statutory requirement for six to eight years of service for any individual who enters the military. Part of that service may be in the reserves, either in the Selected Reserve or the Individual Ready Reserve.

serve service such person has remaining or, if such person is on active duty, will have remaining at the time of his discharge or release from active duty; and

(7) meet all the other requirements for becoming a member of the Selected Reserve of the Ready Reserve of an armed force.

(c)(1) The amount of the bonus paid to any person under this section shall be an amount determined by multiplying up to $50 as determined by the Secretary concerned times the number of months of reserve obligation such person has remaining or, if such person is on active duty, will have remaining at the time of his discharge or release from active duty.

(2) In the case of a person who has, or at the time of discharge or release from active duty will have, eighteen months or less reserve service obligation remaining, the Secretary concerned may pay the total amount of the bonus at the time such person signs a reserve affiliation agreement under this section. In the case of a person who has, or at the time of discharge or release from active duty will have, more than eighteen months of such service remaining, the Secretary concerned may pay one-half of the bonus at the time such person signs a reserve affiliation agreement under this section and the remaining one-half on the date of the sixth anniversary of such person's original enlistment or call to active duty.

(3) In lieu of the procedures set out in paragraph (2), the Secretary concerned may pay the bonus in monthly installments in such amounts as may be determined by the Secretary. Monthly payments under this paragraph shall begin after the first month of satisfactory service of the person and are payable only for those months in which the person serves satisfactorily. Satisfactory service shall be determined under the regulations prescribed under subsection (f).

(d)(1) A person who signs a reserve affiliation agreement under this section and who fails during the period covered by such agreement to serve satisfactorily in the Selected Reserve in which such person agrees to serve shall refund to the United States an amount which bears the same ratio to the amount of the bonus paid to such person as the period which such person failed to satisfactorily serve bears to the total period for which the bonus was paid.

(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 5 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 paragraph (1). This paragraph applies to any case commenced under title 11 after September 30, 1980.

(e) No bonus may be paid under this section to any person for a reserve obligation agreement entered into after December 31, 2001.

(f) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary of Defense and by the Secretary of

Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(g) The authority in subsection (a) does not apply to the Secretary of Commerce and the Secretary of Health and Human Services.

(Added P.L. 96–342, § 805(a)(1), Sept. 8, 1980, 94 Stat. 1093, and amended P.L. 97–86, § 505, Dec. 1, 1981, 95 Stat. 1100; P.L. 99–145, § 645(a), 99 Stat. 654; P.L. 100–180, § 626(b), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, § 613, Nov. 29, 1989, 103 Stat. 1446, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 612(d), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 612(c), Nov. 30, 1993, 107 Stat. 1680; P.L. 103–337, § 611(c), Oct. 5, 1994, 108 Stat. 2782; P.L. 104–106, § 611(c), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(e), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § § 611(e), 623, Nov. 18, 1997, 111 Stat. 1785, 1793; P.L. 105–261, § 611(e), Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, § 611(e), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1 (§ 621(e)), Oct. 30, 2000, 114 Stat. 1654A–151.)

[§ 308f. Repealed. P.L. 106–398, § 1 (§ 624(b)(1)), 114 Stat. 1654A–153.]

§ 308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve

(a) An eligible person who enlists in a combat or combat support skill of an element (other than the Selected Reserve) of the Ready Reserve of an armed force for a term of enlistment of not less than six years, and who has not previously served in an armed force, may be paid a bonus as provided in subsection (b).

(b) Eligibility for and the amount and method of payment of a bonus under this section shall be determined in accordance with regulations prescribed under subsection (g), except that the amount of such a bonus may not exceed $1,000.

(c) A bonus may not be paid under this section for a term of enlistment to any person who fails to complete satisfactorily initial active duty for training or who, upon completion of initial active duty for training, elects to serve the remainder of the term of enlistment in the Selected Reserve or in an active component of an armed force.

(d) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the element of the Ready Reserve with respect to which the bonus was paid shall refund to the United States an amount which bears the same ratio to the amount of the bonus paid to such person as the period which such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

(e) An obligation to reimburse the United States imposed under subsection (d) is, for all purposes, a debt owed to the United States.

(f) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an enlistment for which a bonus was paid under this section does not discharge the person receiving such bonus payment from the debt arising under subsection (d). This subsection applies to any case commenced under title 11 after September 24, 1983.

(g) This section shall be administered under 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.

(h) A bonus may not be paid under this section to any person for an enlistment after September 30, 1992.

(Added P.L. 98–94, § 1011(a), Sept. 24, 1983, 97 Stat. 663, and amended P.L. 99–145, § 646(a), § 1303(b)(3), Nov. 8, 1985, 99 Stat. 654, 740; P.L. 100–180, § 626(b), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, § 613, Nov. 29, 1989, 103 Stat. 1446, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve

(a)(1) An eligible person who is or has been a member of an armed force and who reenlists, enlists, or voluntarily extends an enlistment in a combat or combat support skill of an element (other than the Selected Reserve) of the Ready Reserve of an armed force for a period of three years, or for a period of six years, beyond any other period the person is obligated to serve may be paid a bonus as provided in subsection (b).

(2) A bonus may not be paid under this section to a person who has failed to complete satisfactorily any original term of enlistment in the armed forces.

(b)(1) Eligibility for and the amount and method of payment of a bonus under this section shall be determined under regulations to be prescribed under subsection (f).

(2) The amount of a bonus under this section—

(A) may not exceed $1,500, in the case of a person who enlists for period of six years; and

(B) may not exceed $750 in the case of a person who enlists for a period of three years.

(3) A bonus paid under this section shall be paid as follows:

(A) In the case of a bonus under paragraph (2)(A)—

(i) $500 shall be paid at the time of the reenlistment, enlistment, or extension of enlistment for which the bonus is paid; and

(ii) the remainder shall be paid in equal annual increments.

(B) In the case of a bonus under paragraph (2)(B), the amount of the bonus shall be paid in equal annual increments.

(c) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the Ready Reserve shall refund to the United States an amount which bears the same ratio to the amount of the bonus paid to such person as the period which such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

(d) An obligation to reimburse the United States imposed under subsection (c) is, for all purposes, a debt owed to the United States.

(e) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of a reenlistment, enlistment, or extension for which a bonus was paid under this section does not discharge the person receiving such bonus payment from the debt arising under subsection (c). This subsection applies to any case commenced under title 11 after September 24, 1983.

(f)(1) This section shall be administered under regulations to be 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.

(2) Regulations under this section may require that as a condition of receiving a bonus under this section the person receiving the bonus agree to participate in an annual muster of the Reserves, or in active duty for training, as may be required by the Secretary concerned.

(g) A bonus may not be paid under this section to any person for a reenlistment, enlistment, or voluntary extension of an enlistment after December 31, 2001.

(Added P.L. 98–94, § 1011(a), Sept. 24, 1983, 97 Stat. 663, and amended P.L. 98–525, § 552(f)(2), Oct. 19, 1984, 98 Stat. 2532; P.L. 99–145, § 646(a)–(c), § 1303(b)(3), Nov. 8, 1985, 99 Stat. 654, 740; P.L. 100–180, § 626(b), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, § 613, Nov. 29, 1989, 103 Stat. 1446; P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 612(d), Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 612(d), Nov. 30, 1993, 107 Stat. 1680; P.L. 103–337, § 611(d), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 611(d), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(f), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, § 611(f), Nov. 18, 1997, 111 Stat. 1785; P.L. 105–261, § 611(f), Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, § 611(f), Oct. 5, 1999, 113 Stat. 650; P.L. 106–398, § 1 (§ 621(f)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 308i. Special pay: prior service enlistment bonus

(a) AUTHORITY AND ELIGIBILITY REQUIREMENTS.—(1) A person who is a former enlisted member of an armed force who enlists in the Selected Reserve of the Ready Reserve of an armed force for a period of three or six years in a critical military skill designated for such a bonus by the Secretary concerned and who meets the requirements of paragraph (2) may be paid a bonus as prescribed in subsection (b).

(2) A bonus may only be paid under this section to a person who meets each of the following requirements:

(A) The person has completed a military service obligation, but has less than 14 years of total military service, and received an honorable discharge at the conclusion of that military service obligation.

(B) The person was not released, or is not being released, from active service for the purpose of enlistment in a reserve component.

(C) The person is projected to occupy, or is occupying, a position as a member of the Selected Reserve in a specialty in which the person—

(i) successfully served while a member on active duty and attained a level of qualification while on active duty commensurate with the grade and years of service of the member; or

(ii) has completed training or retraining in the specialty skill that is designated as critically short and attained a level of qualification in the specialty skill that is commensurate with the grade and years of service of the member.

(D) The person has not previously been paid a bonus (except under this section) for enlistment, reenlistment, or extension of enlistment in a reserve component.

(b) BONUS AMOUNTS; PAYMENT.—(1) The amount of a bonus under this section may not exceed—

(A) $5,000, in the case of a person who enlists for a period of six years;

(B) $2,500, in the case of a person who, having never received a bonus under this section, enlists for a period of three years; and

(C) $2,000, in the case of a person who, having received a bonus under this section for a previous three-year enlistment, reenlists or extends the enlistment for an additional period of three years.

(2) Any bonus payable under this section shall be disbursed in one initial payment of an amount not to exceed one-half of the total amount of the bonus and subsequent periodic partial payments of the balance of the bonus. The Secretary concerned shall prescribe the amount of each partial payment and the schedule for making the partial payments.

(c) CONDITION ON ELIGIBILITY; LIMITATION ON NUMBER OF BONUSES.—(1) To be eligible for a second bonus under this section in the amount specified in subsection (b)(1)(C), a person must—

(A) enter into a reenlistment or extension of an enlistment for a period of three years not later than the date on which the enlistment for which the first bonus was paid would expire; and

(B) still satisfy the eligibility requirements under subsection (a).

(2) A person may not be paid more than one six-year bonus or two three-year bonuses under this section.

(d) REPAYMENT OF BONUS.—(1) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the element of the Selected Reserve of the Ready Reserve with respect to which the bonus was paid shall refund to the United States an amount that bears the same relation to the amount of the bonus paid to such person as the period that such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

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

(3) Under regulations prescribed pursuant to subsection (e), the Secretary concerned may remit or cancel the whole or any part of an obligation to reimburse the United States imposed under paragraph (1).

(4) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an enlistment for which a bonus was paid under this section shall not discharge the person receiving such bonus payment from the debt arising under paragraph (1). This subsection applies to any case commenced under title 11 after September 30, 1985.

(e) REGULATIONS.—This section shall be administered under 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 the Coast Guard is not operating as a service in the Navy.

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any person for an enlistment after December 31, 2001.

(Added P.L. 99–145, § 644(a)(1), Nov. 8, 1985, 99 Stat. 652, and amended P.L. 100–26, § 8(d)(4), Apr. 21, 1987, 101 Stat. 285; P.L. 100–180, § 626(b), Dec. 4, 1987, 101 Stat. 1104; P.L. 101–189, § 613, Nov. 29, 1989, 103 Stat. 1446, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 612(d), § 1136, Oct. 23, 1992, 106 Stat. 2422, 2542; P.L. 103–160, § 612(e), Nov. 30, 1993, 107 Stat. 1680; P.L. 103–337, § 611(e), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 611(e), Feb. 10, 1996, 110 Stat. 359; P.L. 104–201, § 611(g), Sept. 23, 1996, 110 Stat. 2543; P.L. 105–85, §§ 611(g), 622, Nov. 18, 1997, 111 Stat. 1785, 1791; P.L. 105–261, § 611(g) Oct. 16, 1998, 112 Stat. 2038; P.L. 106–65, §§ 611(g), 623(a), Oct. 5, 1999, 113 Stat. 650, 653; P.L. 106–398, § 1 (§ 621(g)), Oct. 30, 2000, 114 Stat. 1654A–151.)

§ 309. Special pay: enlistment bonus [1]

(a) BONUS AUTHORIZED; BONUS AMOUNT.—A person who enlists in an armed force for a period of at least 2 years may be paid a bonus in an amount not to exceed $20,000. The bonus may be paid in a single lump sum or in periodic installments.

(b) REPAYMENT OF BONUS.—(1) A member of the armed forces who voluntarily, or because of the member's misconduct, does not complete the term of enlistment for which a bonus was paid under this section, or a member who is not technically qualified in the skill for which the bonus was paid, if any (other than a member who is not qualified because of injury, illness, or other impairment not the result of the member's misconduct), shall refund to the United States that percentage of the bonus that the unexpired part of member's enlistment is of the total enlistment period for which the bonus was paid.

(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 5 years after the termination of an enlistment for which a bonus was paid under this section does not discharge the person receiving the bonus from the debt arising under paragraph (1).

(c) RELATION TO PROHIBITION ON BOUNTIES.—The enlistment bonus authorized by this section is not a bounty for purposes of section 514(a) of title 10.

(d) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary of Defense and by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(e) DURATION OF AUTHORITY.—No bonus shall be paid under this section with respect to any enlistment in the armed forces made after December 31, 2001.

(Added P.L. 106–398, § 1 (§ 624(a)(1)), Oct. 30, 2000, 114 Stat. 1654A–152.)

§ 310. Special pay: duty subject to hostile fire or imminent danger

(a) Under regulations prescribed by the Secretary of Defense, a member of a uniformed service may be paid special pay at the rate of $150 for any month in which he was entitled to basic pay and in which he—

(1) was subject to hostile fire or explosion of hostile mines;

[1] Section 514(a) of title 10 prohibits a bounty from being paid to induce a person to enlist. Enlistment bonuses and clothing allowances are specifically excluded from the definition of bounties.

(2) was on duty in an area in which he was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period he was on duty in the area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;

(3) was killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; or

(4) was on duty in a foreign area in which he was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

A member covered by clause (3) who is hospitalized for the treatment of his injury or wound may be paid special pay under this section for not more than three additional months during which he is so hospitalized.

(b)(1) A member may not be paid more than one special pay under this section for any month. A member may be paid special pay under this section in addition to any other pay and allowances to which he may be entitled.

(2) A member of a reserve component who is eligible for special pay under this section for a month shall receive the full amount authorized in subsection (a) for that month regardless of the number of days during that month on which the member satisfies the eligibility criteria specified in such subsection.

(c) Any determination of fact that is made in administering this section is conclusive. Such a determination may not be reviewed by any other officer or agency of the United States unless there has been fraud or gross negligence. However, the determination may be changed on the basis of new evidence or for other good cause.

(Added P.L. 88–132, § 9(a)(1), Oct. 2, 1963, 77 Stat. 216, and amended P.L. 89–132, § 4, Aug. 21, 1965, 79 Stat. 547; P.L. 98–94, § 905(a), (b) (1), Sept. 24, 1983, 97 Stat. 636, 637; P.L. 99–145, § 638(a), Nov. 8, 1985, 99 Stat. 649; P.L. 101–510, § 1322(c)(6), Nov. 5, 1990, 104 Stat. 1672; P.L. 102–190, § 611(a) and 613, Dec. 5, 1991, 105 Stat. 1376 and 1377; P.L. 105–261, § 621, Oct. 16, 1998, 112 Stat. 2042.)

§ 312. Special pay: nuclear-qualified officers extending period of active duty

(a) Under regulations to be prescribed by the Secretary of the Navy, an officer of the naval service who—

(1) is entitled to basic pay;

(2) has the current technical qualification for duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants; and

(3) executes a written agreement to remain on active duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants for a period of three, four, or five years, so long as the new period of obligated active service does not extend beyond the end of 26 years of commissioned service, in addition to any other period of obligated active service;

may, upon the acceptance by the Secretary or his designee of the written agreement, in addition to all other compensation to which he is entitled, be paid a sum of money not to exceed $25,000 for each year of the active-service agreement. The Secretary of the Navy shall determine annually the necessity for continuance of the

special pay and the rate of special pay per year for such active-service agreements accepted within each 12-month period. Upon acceptance of the agreement by the Secretary or his designee, the total amount payable shall be paid in equal annual installments over the length of the contract, commencing at the expiration of any existing period of obligated active service. The Secretary (or his designee) may accept an active service agreement under this section not more than one year in advance of the end of an officer's existing period of obligated active service under such an agreement. In such a case, the amount of the special pay may be paid commencing with the date of acceptance of the agreement, with the number of installments being equal to the number of years covered by the contract plus one.

(b) Pursuant to regulations prescribed by the Secretary of the Navy and subject to such exceptions as may be prescribed in those regulations, refunds, on a pro rata basis, of sums paid pursuant to this section may be required if the officer having received the payment fails to complete the full period of active duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants which he agreed to serve.

(c) Nothing in this section shall alter or modify the obligation of a regular officer to perform active service at the pleasure of the President. Completion of the additional period of active service under this section shall in no way obligate the President to accept a resignation submitted by a regular officer.

(d)(1) An officer who is performing obligated service under an agreement under subsection (a) may, if the amount that may be paid under such subsection is higher than at the time the officer executed such agreement, execute a new agreement under that subsection. The period of such an agreement shall be a period equal to or exceeding the original period of the officer's existing agreement, so long as the period of obligated active service under the new agreement does not extend beyond the end of 26 years of commissioned service. If a new agreement is executed under this subsection, the existing active-service agreement shall be cancelled, effective on the day before an anniversary date of that agreement after the date on which the amount that may be paid under this section is increased.

(2) This subsection shall be carried out under regulations prescribed by the Secretary of the Navy.

(e) The provisions of this section shall be effective only in the case of officers who, on or before December 31, 2001, execute the required written agreement to remain in active service.

(Added P.L. 91–20, § 1(1), June 3, 1969, 83 Stat. 12, and amended P.L. 92–581, § 1(1), (2), Oct. 27, 1972, 86 Stat. 1277; P.L. 94–356, § 2, July 12, 1976, 90 Stat. 901; P.L. 96–513, Title V, § 516(8), Dec. 12, 1980, 94 Stat. 2938; P.L. 96–579, § 2(a), Dec. 23, 1980, 94 Stat. 3359; P.L. 99–145, Title VI, § 632(a), Nov. 8, 1985, 99 Stat. 643; P.L. 101–189, § 614(a), Nov. 29, 1989, 103 Stat. 1446, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–337, § 613(g), Oct. 5, 1994, 108 Stat. 2783; P.L. 104–106, § 613(e), Feb. 10, 1996, 110 Stat. 360; P.L. 104–201, § 613(d), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, §§ 613(d), 624(a), Nov. 18, 1997, 111 Stat. 1786, 1793; P.L. 105–261, § 613(d), Oct. 16, 1998, 112 Stat. 2039; P.L. 106–65, §§ 613(e), 624(a), Oct. 5, 1999, 113 Stat. 650, 654; P.L. 106–398, § 1 (§ 623(c)), Oct. 30, 2000, 114 Stat. 1654A–152.)

§ 312a. Special pay: nuclear-trained and qualified enlisted members

(a) Under regulations prescribed by the Secretary of Defense, an enlisted member of the naval service who—

(1) is entitled to basic pay;

(2) is currently qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(3) has completed at least six, but not more than ten, years of active duty and executes, when eligible, a reenlistment agreement for not less than two years;

may upon acceptance of the reenlistment agreement by the Secretary of the Navy or his designee, be paid a bonus not to exceed six months of the basic pay to which he was entitled at the time of his discharge or release, multiplied by the number of years or the monthly fractions thereof, of additional obligated service, not to exceed six years, or $15,000, whichever is the lesser amount.

(b) Bonus payments authorized under this section may be paid in either a lump sum or in installments.

(c) An amount paid to a member under subsection (a) is in addition to all other compensation to which he is entitled and does not count against the limitation prescribed by section 308(a) of this title concerning the total amount of reenlistment bonus that may be paid.

(d) Under regulations prescribed by the Secretary of the Navy, refunds, on a pro rata basis, of sums paid under subsection (a) may be required, and further payments terminated, if the member who has received the payment fails to complete his reenlistment contract, or fails to maintain his technical qualification for duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants.

(e) Provisions of this section shall be effective only in the cases of members who, on or before June 30, 1975, execute the required written agreement to remain in active service.

(Added P.L. 92–581, § 1(3), Oct. 27, 1972, 86 Stat. 1277, and amended P.L. 97–295, § 3(3), Oct. 12, 1982, 96 Stat. 1303.)

§ 312b. Special pay: nuclear career accession bonus

(a)(1) Under regulations prescribed by the Secretary of the Navy, an individual who is selected for officer naval nuclear power training and who executes a written agreement to participate in a program of training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants may be paid a bonus of $20,000 upon acceptance by the Secretary of the written agreement. Upon acceptance of the agreement by the Secretary, the amounts payable upon selection for training and upon completion of training, respectively, as determined under subsection (b), shall become fixed.

(2) Under such regulations, and subject to such exceptions, as the Secretary of the Navy may prescribe, an individual who has entered into an agreement with the Secretary under this subsection, who has been paid a bonus under this subsection, and who fails to commence or satisfactorily complete the nuclear power training specified in the agreement shall be required to refund such bonus.

(b) The Secretary of the Navy shall determine annually the total amount of the bonus to be paid under this section and of that amount the portions that are to be paid—

(1) upon selection for officer naval nuclear power training; and

(2) upon successful completion, as a commissioned officer, of training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

(c) The provisions of this section shall be effective only in the case of officers who, on or before December 31, 2001, have been accepted for training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

(Added P.L. 94–356, § 3, July 12, 1976, 90 Stat. 901, and amended P.L. 96–579, § 2(b)(1)–(3), Dec. 23, 1980, 94 Stat. 3359; P.L. 97–60, § 119, Oct. 14, 1981, 95 Stat. 997; P.L. 99–145, § 632(b), § 1303(b)(4), Nov. 8, 1985, 99 Stat. 644, 740; P.L. 101–189, § 614(b), Nov. 29, 1989, 103 Stat. 1446; P.L. 101–510, § 1322(c)(7), Nov. 5, 1990, 104 Stat. 1672, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–337, § 613(h), Oct. 5, 1994, 108 Stat. 2784; P.L. 104–106, § 613(f), Feb. 10, 1996, 110 Stat. 360; P.L. 104–201, § 613(e), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, §§ 613(e), 624(b), Nov. 18, 1997, 111 Stat. 1786, 1793; P.L. 105–261, § 613(e), Oct. 16, 1998, 112 Stat. 2039; P.L. 106–65, §§ 613(f), 624(b), Oct. 5, 1999, 113 Stat. 650, 654; P.L. 106–398, § 1 (§ 623(d)), Oct. 30, 2000, 114 Stat. 1654A–152.)

§ 312c. Special pay: nuclear career annual incentive bonus

(a)(1) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

(A) is entitled to basic pay;

(B) is not above the pay grade O–6;

(C) has completed his initial obligated active service as an officer;

(D) has, as a commissioned officer, successfully completed training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(E) has the current technical qualifications for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, in addition to all other compensation to which he is entitled, be paid an annual bonus in an amount not to exceed $22,000 for each nuclear service year.

(2) In order to be eligible for an annual bonus for any service year in accordance with this subsection, an otherwise technically qualified officer must have been on active duty on the last day of that nuclear service year.

(3) The amount of the annual bonus to which an officer would otherwise be entitled for a nuclear service year in accordance with this subsection shall be reduced on a pro rata basis for each day of that nuclear service year on which he—

(A) was not on active duty;

(B) was not technically qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

(C) was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or

(D) was entitled to receive aviation career incentive pay in accordance with section 301a while serving in a billet other than a billet that required the officer—

(i) be technically qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(ii) be qualified for the performance of operational flying duties.

(b)(1) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

(A) is entitled to basic pay;

(B) is not above the pay grade O–6;

(C) has, as an enlisted member, received training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(D) has the current technical qualifications for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, in addition to all other compensation to which he is entitled, be paid an annual bonus in an amount not to exceed $10,000 for each nuclear service year.

(2) In order to be eligible for an annual bonus for any nuclear service year in accordance with this subsection, an otherwise technically qualified officer must have been on active duty on the last day of that nuclear service year.

(3) The amount of the annual bonus to which an officer would otherwise be entitled in accordance with this subsection shall be reduced on a pro rata basis for each day of that nuclear service year on which he—

(A) was not in an assignment involving the direct supervision, operation, or maintenance of naval nuclear propulsion plants;

(B) was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or

(C) was entitled to receive aviation career incentive pay in accordance with section 301a while serving in a billet other than a billet—

(i) involving the direct supervision, operation, or maintenance of naval nuclear propulsion plants; and

(ii) that required the officer be qualified for the performance of operational flying duties.

(c) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who is not on active duty on the last day of a nuclear service year or who, on or before the last day of a nuclear service year, loses his technical qualifications or advances from the pay grade of O–6 to a higher pay grade may be paid a bonus in accordance with subsection (a) or (b) on a pro rata basis, if otherwise qualified, unless termination of active duty or loss of technical qualifications was voluntary or was the result of his own misconduct.

(d) For the purposes of this section, a "nuclear service year" is any fiscal year beginning before December 31, 2001.

(Added P.L. 94–356, §3, July 12, 1976, 90 Stat. 901, and amended P.L. 96–513, §516(9), Dec. 12, 1980, 94 Stat. 2938; P.L. 96–579, §2(c), Dec. 23, 1980, 94 Stat. 3359; P.L. 99–145, §632(c), Nov. 8, 1985, 99 Stat. 645; P.L. 101–189, §614(c), Nov. 29, 1989, 103 Stat. 1446; P.L. 101–510, §1322(c)(8), Nov. 5, 1990, 104 Stat. 1672, P.L. 102–25, §702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–337, §613(i), Oct. 5, 1994, 108 Stat. 2784; P.L. 104–106, §613(g), Feb. 10, 1996, 110

Stat. 360; P.L. 104–201, § 613(f), Sept. 23, 1996, 110 Stat. 2544; P.L. 105–85, §§ 613(f), 624(c), Nov. 18, 1997, 111 Stat. 1786, 1793; P.L. 105–261, § 613(f), Oct. 16, 1998, 112 Stat. 2039; P.L. 106–65, §§ 613(g), 624(c), Oct. 5, 1999, 113 Stat. 650, 654; P.L. 106–398, § 1 (§ 623(e)), Oct. 30, 2000, 114 Stat. 1654A–152.)

§ 314. Special pay or bonus: qualified enlisted members extending duty at designated locations overseas

(a) COVERED MEMBERS.—This section applies with respect to 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.

(b) SPECIAL PAY OR BONUS AUTHORIZED.—Upon the acceptance by the Secretary concerned of the agreement providing for an extension of the tour of duty of an enlisted member described in subsection (a), the member is entitled, at the election of the Secretary concerned, to either—

(1) special pay in monthly installments in an amount prescribed by the Secretary, but not to exceed $80 per month; or

(2) an annual bonus in an amount prescribed by the Secretary, but not to exceed $2,000 per year.

(c) SELECTION AND PAYMENT OF SPECIAL PAY OR BONUS.—Not later than the date on which the Secretary concerned accepts an agreement described in subsection (a)(4) providing for the extension of a member's tour of duty, the Secretary concerned shall notify the member regarding whether the member will receive special pay or a bonus under this section. The payment rate for the special pay or bonus shall be fixed at the time of the agreement and may not be changed during the period of the extended tour of duty. The Secretary concerned may pay a bonus under this section either in a lump sum or installments.

(d) REPAYMENT OF BONUS.—(1) A member who, having entered into a written agreement to extend a tour of duty for a period under subsection (a), receives a bonus payment under subsection (b)(2) for a 12-month period covered by the agreement and ceases during that 12-month period to perform the agreed tour of duty shall refund to the United States the unearned portion of the bonus. The unearned portion of the bonus is the amount by which the amount of the bonus paid to the member exceeds the amount determined by multiplying the amount of the bonus paid by the percent determined by dividing 12 into the number of full months during which the member performed the duty in the 12-month period.

(2) The Secretary concerned may waive the obligation of a member to reimburse the United States under paragraph (1) if the Secretary determines that conditions and circumstances warrant the waiver.

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

(4) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of the agreement does not discharge the member signing the agreement from a debt arising under the agreement or under paragraph (1). This paragraph applies to any case commenced under title 11 on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998.

(e) EFFECT OF REST AND RECUPERATIVE ABSENCE.—A member who elects to receive one of the benefits specified in section 705(b) of title 10 [1] as part of the extension of a tour of duty is not entitled to the special pay authorized by subsection (b)(1) for the period of the extension of duty for which the benefit under such section is provided.

(Added P.L. 96–579, § 5(a)(1), Dec. 23, 1980, 94 Stat. 3366, and amended P.L. 99–145, § 641(a), Nov. 8, 1985, 99 Stat. 652; P.L. 105–85, § 625(a), Nov. 18, 1997, 111 Stat. 1794.)

§ 315. Special pay: engineering and scientific career continuation pay

(a) In this section, the term "engineering or scientific duty" means service performed by an officer—

(1) that requires an engineering or science degree; and

(2) that requires a skill designated (under regulations prescribed by the Secretary of Defense for the armed forces, by the Secretary of Commerce for the National Oceanic and Atmospheric Administration, or by the Secretary of Health and Human Services for the Public Health Service) as critical and as a skill in which there is a critical shortage of officers in the uniformed service concerned.

(b) Under regulations prescribed by the Secretary concerned, an officer of a uniformed service who—

(1) is entitled to basic pay;

(2) is below the pay grade of O–7;

(3) holds a degree in engineering or science from an accredited college or university;

(4) has been certified by the Secretary concerned as having the technical qualifications for detail to engineering or scientific duty;

(5) has completed at least three but less than nineteen years of engineering or scientific duty as an officer; and

(6) executes a written agreement to remain on active duty for detail to engineering or scientific duty for at least one year, but not more than four years;

may, upon acceptance of the written agreement by the Secretary concerned, be paid, in addition to all other compensation to which the officer is entitled, an amount not to exceed $3,000 multiplied by the number of years, or monthly fraction thereof, of obligated service to which the officer agrees under the agreement. The total amount payable may be paid in a lump sum or in equal periodic installments, as determined by the Secretary concerned.

[1] Section 705 of title 10 authorizes the following options in lieu of the special pay authorized by this section:

(c)(1) An officer who does not serve on active duty for the entire period for which he has been paid under subsection (b) shall refund that percentage of the payment that the unserved part of the period is of the total period for which the payment was made. Nothing in this subsection shall alter or modify the obligation of a regular officer to perform active service at the pleasure of the President. Completion by a regular officer of the total period of obligated service specified in an agreement under subsection (b) does not obligate the President to accept a resignation submitted by that officer.

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

(4) 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 member signing such agreement from a debt arising under such agreement or under paragraph (1). This paragraph applies to any case commenced under title 11 after September 30, 1981.

(Added P.L. 97–60, § 120(a), Oct. 14, 1981, 95 Stat. 998, and amended P.L. 99–145, § 637(a), Nov. 8, 1985, 99 Stat. 648; P.L. 100–26, § 8(e)(6), Apr. 21, 1987, 101 Stat. 286, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117.)

§ 316. Special pay: foreign language proficiency pay

(a) Any member of the uniformed services—

(1) who is entitled to basic pay under section 204 of this title;

(2) who has been certified by the Secretary concerned within the past 12 months to be proficient in a foreign language identified by the Secretary concerned as being a language in which it is necessary to have personnel proficient because of national defense or public health considerations; and

(3) who—

(A) is qualified in a uniformed services specialty requiring such proficiency;

(B) received training, under regulations prescribed by the Secretary concerned, designed to develop such proficiency;

(C) is assigned to duties requiring such a proficiency; or

(D) is proficient in a foreign language for which the uniformed service may have a critical need (as determined by the Secretary concerned),

may be paid special pay under this section in addition to any other pay or allowance to which the member is entitled.

(b) The monthly rate for special pay under subsection (a) shall be determined by the Secretary concerned and may not exceed $300.

(c)(1) Under regulations prescribed by the Secretary concerned, when a member of a reserve component who is entitled to compensation under section 206 of this title meets the requirements for special pay authorized in subsection (a), except the requirement prescribed in subsection (a)(1), the member may be paid an increase in compensation equal to one-thirtieth of the monthly special pay authorized under subsection (b) for a member who is entitled to basic pay under section 204 of this title.

(2) A member eligible for increased compensation under paragraph (1) shall be paid such increase—

(A) for each regular period of instruction, or period of appropriate duty, in which he is engaged for at least two hours, including instruction received or duty performed on a Sunday or holiday; and

(B) for each period of performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary concerned may prescribe.

(3) This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

(d) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary, by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.

(Added P.L. 99–661, § 634(a)(1), Nov. 14, 1986, 100 Stat. 3884, and amended P.L. 104–201, § 616(a), (b), Sept. 23, 1996, 110 Stat. 2547; P.L. 106–65, § 625, Oct. 5, 1999, 113 Stat. 654.)

§ 316a. Waiver of certification requirement

(a) CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.—(1) A member of the armed forces described in subsection (b) shall be paid special pay under section 316 of this title for the active duty performed by that member during the period described in paragraph (2) if—

(A) the member was assigned to duty in connection with a contingency operation;

(B) the Secretary concerned (under regulations prescribed by the Secretary of Defense) determines that the member was unable to schedule or complete the certification required for eligibility for the special pay under that section because of that duty;

(C) except for not meeting the certification requirement in that section, the member was otherwise eligible for that special pay for that active duty; and

(D) the member completes the certification requirement specified in that section before the end of the period established for the member in subsection (c).

(2) The period for which a member may be paid special pay for active duty pursuant to paragraph (1) is the period beginning on the date on which the member was assigned to the duty referred to in subparagraph (A) of that paragraph and ending on the date

of the member's certification referred to in subparagraph (D) of that paragraph.

(b) ELIGIBLE MEMBER DESCRIBED.—A member of the armed forces referred to in subsection (a) is a member who meets the requirement referred to in section 316(a)(3) of this title.

(c) PERIOD FOR CERTIFICATION.—The period referred to in subparagraph (D) of subsection (a)(1) with respect to a member of the armed forces is the 180-day period beginning on the date on which the member was released from the duty referred to in that subsection. The Secretary concerned may extend that period for a member in accordance with regulations prescribed by the Secretary of Defense.

(Added P.L. 102–190, § 636(a), Dec. 5, 1991, 105 Stat. 1382.)

§ 317. Special pay: officers in critical acquisition positions extending period of active duty

(a) BONUS AUTHORIZED.—An officer described in subsection (b) who executes a written agreement to remain on active duty in a critical acquisition position for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(b) COVERED OFFICERS.—An officer referred to in subsection (a) is an officer of the Army, Navy, Air Force, or Marine Corps who—

(1) is a member of an Acquisition Corps selected to serve in, or serving in, a critical acquisition position designated under section 1733 of title 10; and

(2) is eligible to retire, or is assigned to such position for a period that will extend beyond the date on which the officer will be eligible to retire, under any provision of law.

(c) AMOUNT OF BONUS.—The amount of a bonus paid under this section for each year a member agrees to remain on active duty may not be more than 15 percent of the annual rate of basic pay paid to the member at the time the member executes a written agreement to under this section.

(d) PAYMENT OF BONUS.—Upon the acceptance of a written agreement under subsection (a) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed and may be paid by the Secretary in either a lump sum or installments.

(e) ADDITIONAL PAY.—A bonus paid under this section is in addition to other pay and allowances to which an officer is entitled.

(f) REPAYMENT OF BONUS.—(1) If an officer who has entered into a written agreement under subsection (a) and who has received all or part of a bonus under this section fails to complete the total period of active duty specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay 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 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the officer signing the agreement from a debt arising under such agreement or

under paragraph (1). This paragraph applies to any case commenced under title 11 after January 1, 1991.

(g) PERIOD OF COMMITMENT.—The period of active duty agreed upon by an officer in a written agreement under this section is in addition to any other service commitment of the officer, except that any period of active duty agreed upon in a written agreement under subsection (a)(2) or (b)(2) of section 1734 of title 10 by the officer may be counted concurrently with the commitment under this section.

(h) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section. Regulations prescribed by the Secretary of a military department shall be subject to the approval of the Secretary of Defense.

(Added P.L. 101–510, § 1203, Nov. 5, 1990, 104 Stat 1656.)

§ 318. Special pay: special warfare officers extending period of active duty

(a) SPECIAL WARFARE OFFICER DEFINED.—In this section, the term "special warfare officer" means an officer of a uniformed service who—

(1) is qualified for a military occupational specialty or designator identified by the Secretary concerned as a special warfare military occupational specialty or designator; and

(2) is serving in a position for which that specialty or designator is authorized.

(b) RETENTION BONUS AUTHORIZED.—A special warfare officer who meets the eligibility requirements specified in subsection (c) and who executes a written agreement to remain on active duty in special warfare service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(c) ELIGIBILITY REQUIREMENTS.—A special warfare officer may apply to enter into an agreement referred to in subsection (b) if the officer—

(1) is in pay grade O–3, or is in pay grade O–4 and is not on a list of officers recommended for promotion, at the time the officer applies to enter into the agreement;

(2) has completed at least 6, but not more than 14, years of active commissioned service; and

(3) has completed any service commitment incurred to be commissioned as an officer.

(d) AMOUNT OF BONUS.—The amount of a retention bonus paid under this section may not be more than $15,000 for each year covered by the agreement.

(e) PRORATION.—The term of an agreement under subsection (b) and the amount of the retention bonus payable under subsection (d) may be prorated as long as the agreement does not extend beyond the date on which the officer executing the agreement would complete 14 years of active commissioned service.

(f) PAYMENT METHODS.—(1) Upon acceptance of an agreement under subsection (b) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed.

(2) The amount of the retention bonus may be paid as follows:

(A) At the time the agreement is accepted by the Secretary concerned, the Secretary may make a lump sum payment equal to half the total amount payable under the agreement. The balance of the bonus amount shall be paid in equal annual installments on the anniversary of the acceptance of the agreement.

(B) The Secretary concerned may make graduated annual payments under regulations prescribed by the Secretary, with the first payment being payable at the time the agreement is accepted by the Secretary and subsequent payments being payable on the anniversary of the acceptance of the agreement.

(g) ADDITIONAL PAY.—A retention bonus paid under this section is in addition to any other pay and allowances to which an officer is entitled.

(h) REPAYMENT.—(1) If an officer who has entered into an agreement under subsection (b) and has received all or part of a retention bonus under this section fails to complete the total period of active duty in special warfare service as specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid the officer under this section.

(2) An obligation to repay 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 entered into under subsection (a) does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1).

(i) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section, including the definition of the term "special warfare service" for purposes of this section. Regulations prescribed by the Secretary of a military department under this section shall be subject to the approval of the Secretary of Defense.

(Added P.L. 106–65, § 626, Oct. 5, 1999, 113 Stat. 655.)

§ 319. Special pay: surface warfare officer continuation pay

(a) ELIGIBLE SURFACE WARFARE OFFICER DEFINED.—In this section, the term "eligible surface warfare officer" means an officer of the Regular Navy or Naval Reserve on active duty who—

(1) is qualified and serving as a surface warfare officer;

(2) has been selected for assignment as a department head on a surface vessel; and

(3) has completed any service commitment incurred through the officer's original commissioning program.

(b) SPECIAL PAY AUTHORIZED.—An eligible surface warfare officer who executes a written agreement to remain on active duty to complete one or more tours of duty to which the officer may be ordered as a department head on a surface vessel may, upon the acceptance of the agreement by the Secretary of the Navy, be paid an amount not to exceed $50,000.

(c) PRORATION.—The term of the written agreement under subsection (b) and the amount payable under the agreement may be prorated.

(d) PAYMENT METHODS.—Upon acceptance of the written agreement under subsection (b) by the Secretary of the Navy, the total amount payable pursuant to the agreement becomes fixed. The Secretary shall prepare an implementation plan specifying the amount of each installment payment under the agreement and the times for payment of the installments.

(e) ADDITIONAL PAY.—Any amount paid under this section is in addition to any other pay and allowances to which an officer is entitled.

(f) REPAYMENT.—(1) If an officer who has entered into a written agreement under subsection (b) and has received all or part of the amount payable under the agreement fails to complete the total period of active duty as a department head on a surface vessel specified in the agreement, the Secretary of the Navy may require the officer to repay the United States, to the extent that the Secretary of the Navy determines conditions and circumstances warrant, any or all sums paid under this section.

(2) An obligation to repay 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 entered into under subsection (b) does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1).

(g) REGULATIONS.—The Secretary of the Navy shall prescribe regulations to carry out this section.

(Added P.L. 106–65, § 627, Oct. 5, 1999, 113 Stat. 656.)

§ 320. Incentive pay: career enlisted flyers

(a) ELIGIBLE CAREER ENLISTED FLYER DEFINED.—In this section, the term "eligible career enlisted flyer" means an enlisted member of the armed forces who—

(1) is entitled to basic pay under section 204 of this title, or is entitled to pay under section 206 of this title as described in subsection (e) of this section;

(2) holds an enlisted military occupational specialty or enlisted military rating designated as a career enlisted flyer specialty or rating by the Secretary concerned, performs duty as a dropsonde system operator, or is in training leading to qualification and designation of such a specialty or rating or the performance of such duty;

(3) is qualified for aviation service under regulations prescribed by the Secretary concerned; and

(4) satisfies the operational flying duty requirements applicable under subsection (c).

(b) INCENTIVE PAY AUTHORIZED.—(1) The Secretary concerned may pay monthly incentive pay to an eligible career enlisted flyer in an amount not to exceed the monthly maximum amounts specified in subsection (d). The incentive pay may be paid as continuous monthly incentive pay or on a month-to-month basis, dependent

upon the operational flying duty performed by the eligible career enlisted flyer as prescribed in subsection (c).

(2) Continuous monthly incentive pay may not be paid to an eligible career enlisted flyer after the member completes 25 years of aviation service. Thereafter, an eligible career enlisted flyer may still receive incentive pay on a month-to-month basis under subsection (c)(4) for the frequent and regular performance of operational flying duty.

(c) OPERATIONAL FLYING DUTY REQUIREMENTS.—(1) An eligible career enlisted flyer must perform operational flying duties for 6 of the first 10, 9 of the first 15, and 14 of the first 20 years of aviation service, to be eligible for continuous monthly incentive pay under this section.

(2) Upon completion of 10, 15, or 20 years of aviation service, an enlisted member who has not performed the minimum required operational flying duties specified in paragraph (1) during the prescribed period, although otherwise meeting the definition in subsection (a), may no longer be paid continuous monthly incentive pay except as provided in paragraph (3). Payment of continuous monthly incentive pay may be resumed if the member meets the minimum operational flying duty requirement upon completion of the next established period of aviation service.

(3) For the needs of the service, the Secretary concerned may permit, on a case-by-case basis, a member to continue to receive continuous monthly incentive pay despite the member's failure to perform the operational flying duty required during the first 10, 15, or 20 years of aviation service, but only if the member otherwise meets the definition in subsection (a) and has performed at least 5 years of operational flying duties during the first 10 years of aviation service, 8 years of operational flying duties during the first 15 years of aviation service, or 12 years of operational flying duty during the first 20 years of aviation service. The authority of the Secretary concerned under this paragraph may not be delegated below the level of the Service Personnel Chief.

(4) If the eligibility of an eligible career enlisted flyer to continuous monthly incentive pay ceases under subsection (b)(2) or paragraph (2), the member may still receive month-to-month incentive pay for subsequent frequent and regular performance of operational flying duty. The rate payable is the same rate authorized by the Secretary concerned under subsection (d) for a member of corresponding years of aviation service.

(d) MONTHLY MAXIMUM RATES.—The monthly rate of any career enlisted flyer incentive pay paid under this section to a member on active duty shall be prescribed by the Secretary concerned, but may not exceed the following:

Years of aviation service	Monthly rate
4 or less	$150
Over 4	$225
Over 8	$350
Over 14	$400.

(e) ELIGIBILITY OF RESERVE COMPONENT MEMBERS WHEN PERFORMING INACTIVE DUTY TRAINING.—Under regulations prescribed by the Secretary concerned, when a member of a reserve component or the National Guard, who is entitled to compensation under

section 206 of this title, meets the definition of eligible career enlisted flyer, the Secretary concerned may increase the member's compensation by an amount equal to 1/30 of the monthly incentive pay authorized by the Secretary concerned under subsection (d) for a member of corresponding years of aviation service who is entitled to basic pay under section 204 of this title. The reserve component member may receive the increase for as long as the member is qualified for it, for each regular period of instruction or period of appropriate duty, at which the member is engaged for at least two hours, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title.

(f) RELATION TO HAZARDOUS DUTY INCENTIVE PAY OR DIVING DUTY SPECIAL PAY.—A member receiving incentive pay under section 301(a) of this title or special pay under section 304 of this title may not be paid special pay under this section for the same period of service.

(g) SAVE PAY PROVISION.—If, immediately before a member receives incentive pay under this section, the member was entitled to incentive pay under section 301(a) of this title, the rate at which the member is paid incentive pay under this section shall be equal to the higher of the monthly amount applicable under subsection (d) or the rate of incentive pay the member was receiving under subsection (b) or (c)(2)(A) of section 301 of this title.

(h) SPECIALTY CODE OF DROPSONDE SYSTEM OPERATORS.—Within the Air Force, the Secretary of the Air Force shall assign to members who are dropsonde system operators a specialty code that identifies such members as serving in a weather specialty.

(i) DEFINITIONS.—In this section:

(1) The term "aviation service" means participation in aerial flight performed, under regulations prescribed by the Secretary concerned, by an eligible career enlisted flyer.

(2) The term "operational flying duty" means flying performed under competent orders while serving in assignments, including an assignment as a dropsonde system operator, in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying duty performed by members in training that leads to the award of an enlisted aviation rating or military occupational specialty designated as a career enlisted flyer rating or specialty by the Secretary concerned.

(Added P.L. 106–65, § 628, Oct. 5, 1999, 113 Stat. 657.)

§ 321. Special pay: judge advocate continuation pay

(a) ELIGIBLE JUDGE ADVOCATE DEFINED.—In this section, the term "eligible judge advocate" means an officer of the armed forces on full-time active duty who—

(1) is qualified and serving as a judge advocate, as defined in section 801 of title 10; and

(2) has completed—

(A) the active duty service obligation incurred through the officer's original commissioning program; or

(B) in the case of an officer detailed under section 2004 of title 10 or section 470 of title 14, the active duty service obligation incurred as part of that detail.

(b) SPECIAL PAY AUTHORIZED.—An eligible judge advocate who executes a written agreement to remain on active duty for a period of obligated service specified in the agreement may, upon the acceptance of the agreement by the Secretary concerned, be paid continuation pay under this section. The total amount paid to an officer under one or more agreements under this section may not exceed $60,000.

(c) PRORATION.—The term of an agreement under subsection (b) and the amount payable under the agreement may be prorated.

(d) PAYMENT METHODS.—Upon acceptance of an agreement under subsection (b) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed. The Secretary shall prepare an implementation plan specifying the amount of each installment payment under the agreement and the times for payment of the installments.

(e) ADDITIONAL PAY.—Any amount paid to an officer under this section is in addition to any other pay and allowances to which the officer is entitled.

(f) REPAYMENT.—(1) If an officer who has entered into a written agreement under subsection (b) and has received all or part of the amount payable under the agreement fails to complete the total period of active duty specified in the agreement, the Secretary concerned may require the officer to repay the United States, to the extent that the Secretary determines conditions and circumstances warrant, any or all sums paid under this section.

(2) An obligation to repay 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 entered into under subsection (b) does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1).

(g) REGULATIONS.—The Secretary concerned shall prescribe regulations to carry out this section.

(Added P.L. 106–65, § 629, Oct. 5, 1999, 113 Stat. 659.)

§ 322. Special pay: 15-year career status bonus for members entering service on or after August 1, 1986

(a) AVAILABILITY OF BONUS.—The Secretary concerned shall pay a bonus under this section to an eligible career bonus member if the member—

(1) elects to receive the bonus under this section; and

(2) executes a written agreement (prescribed by the Secretary concerned) to remain continuously on active duty until the member has completed 20 years of active-duty service creditable under section 1405 of title 10.

(b) ELIGIBLE CAREER BONUS MEMBER DEFINED.—In this section, the term "eligible career bonus member" means a member of a uniformed service serving on active duty who—

(1) first became a member on or after August 1, 1986; and

(2) has completed 15 years of active duty in the uniformed services (or has received notification under subsection (e) that the member is about to complete that duty).

(c) ELECTION METHOD.—An election under subsection (a)(1) shall be made in such form and within such period as the Secretary concerned may prescribe. An election under that subsection is irrevocable.

(d) AMOUNT OF BONUS; PAYMENT.—(1) A bonus under this section shall be paid in a single lump sum of $30,000.

(2) The bonus shall be paid to an eligible career bonus member not later than the first month that begins on or after the date that is 60 days after the date on which the Secretary concerned receives from the member the election required under subsection (a)(1) and the written agreement required under subsection (a)(2), if applicable.

(e) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary concerned shall transmit to each member who meets the definition of eligible career bonus member a written notification of the opportunity of the member to elect to receive a bonus under this section. The Secretary shall provide the notification not later than 180 days before the date on which the member will complete 15 years of active duty.

(2) The notification shall include the following:

(A) The procedures for electing to receive the bonus.

(B) An explanation of the effects under sections 1401a, 1409, and 1410 of title 10 that such an election has on the computation of any retired or retainer pay that the member may become eligible to receive.

(f) REPAYMENT OF BONUS.—(1) If a person paid a bonus under this section fails to complete a period of active duty beginning on the date on which the election of the person under subsection (a)(1) is received and ending on the date on which the person completes 20 years of active-duty service as described in subsection (a)(2), the person shall refund to the United States the amount that bears the same ratio to the amount of the bonus payment as the uncompleted part of that period of active-duty service bears to the total period of such service.

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

(4) 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 member signing such agreement from a debt arising under the agreement or this subsection.

(Added P.L. 106–65, § 642, Oct. 5, 1999, 113 Stat. 662.)

§ 323. Special pay: retention incentives for members qualified in a critical military skill

(a) RETENTION BONUS AUTHORIZED.—An officer or enlisted member of the armed forces who is serving on active duty and is qualified in a designated critical military skill may be paid a retention bonus as provided in this section if—

(1) in the case of an officer, the member executes a written agreement to remain on active duty for at least 1 year; or

(2) in the case of an enlisted member, the member reenlists or voluntarily extends the member's enlistment for a period of at least 1 year.

(b) DESIGNATION OF CRITICAL SKILLS.—(1) A designated critical military skill referred to in subsection (a) is a military skill designated as critical 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.

(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 notify Congress, in advance, of each military skill to be designated by the Secretary as critical for purposes of this section. The notice shall be submitted at least 90 days before any bonus with regard to that critical skill is offered under subsection (a) and shall include a discussion of the necessity for the bonus, the amount and method of payment of the bonus, and the retention results that the bonus is expected to achieve.

(c) PAYMENT METHODS.—A bonus under this section may be paid in a single lump sum or in periodic installments.

(d) MAXIMUM BONUS AMOUNT.—A member may enter into an agreement under this section, or reenlist or voluntarily extend the member's enlistment, more than once to receive a bonus under this section. However, a member may not receive a total of more than $200,000 in payments under this section.

(e) CERTAIN MEMBERS INELIGIBLE.—A retention bonus may not be provided under subsection (a) to a member of the armed forces who—

(1) has completed more than 25 years of active duty; or

(2) will complete the member's twenty-fifth year of active duty before the end of the period of active duty for which the bonus is being offered.

(f) RELATIONSHIP TO OTHER INCENTIVES.—A retention bonus paid under this section is in addition to any other pay and allowances to which a member is entitled.

(g) REPAYMENT OF BONUS.—(1) If an officer who has entered into a written agreement under subsection (a) fails to complete the total period of active duty specified in the agreement, or an enlisted member who voluntarily or because of misconduct does not complete the term of enlistment for which a bonus was paid under this section, the Secretary of Defense, and the Secretary of Transportation with respect to members of the Coast Guard when it is not operating as a service in the Navy, may require the member to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay 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 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the member from a debt arising under paragraph (2).

(h) ANNUAL REPORT.—Not later than February 15 of each year, the Secretary of Defense and the Secretary of Transportation shall submit to Congress a report—

(1) analyzing the effect, during the preceding fiscal year, of the provision of bonuses under this section on the retention of members qualified in the critical military skills for which the bonuses were offered; and

(2) describing the intentions of the Secretary regarding the continued use of the bonus authority during the current and next fiscal years.

(i) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after December 31, 2001, and no agreement under this section may be entered into after that date.

(Added P.L. 106–398, § 1 (§ 633(a)(1)), Oct. 30, 2000, 114 Stat. 1654A–157.)

CHAPTER 7—ALLOWANCES

Sec.

401. Definitions.
402. Basic allowance for subsistence.
402a. Supplemental subsistence allowance for low-income members with dependents.
403. Basic allowance for housing.
403b. Cost-of-living allowance in the continental United States.
404. Travel and transportation allowances: general.
404a. Travel and transportation allowances: temporary lodging expenses.
405. Travel and transportation allowances: per diem while on duty outside the United States or in Hawaii or Alaska.
405a. Travel and transportation allowances: departure allowances.
406. Travel and transportation allowances: dependents; baggage and household effects.
406a. Travel and transportation allowances: authorized for travel performed under orders that are canceled, revoked, or modified.
406b. Travel and transportation allowances: members of the uniformed services attached to a ship overhauling or inactivating.
406c. Travel and Transportation allowances: members assigned to a vessel under construction.
407. Travel and transportation allowances: dislocation allowance.
408. Travel and transportation allowances: travel within limits of duty station.
409. Travel and transportation allowances: house trailers and mobile homes.
410. Travel and transportation allowances: miscellaneous categories.
411. Travel and transportation allowances: administrative provisions.
411a. Travel and transportation allowances: travel performed in connection with convalescent leave.
411b. Travel and transportation allowances: travel performed in connection with leave between consecutive overseas tours.
411c. Travel and transportation allowances: travel performed in connection with rest and recuperative leave from certain stations in foreign countries.
411d. Travel and transportation allowances: transportation incident to personal emergencies for certain members and dependents.
411e. Travel and transportation allowances: transportation incident to certain emergencies for members performing temporary duty.
411f. Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies.
411g. Travel and transportation allowances: transportation incident to voluntary extensions of overseas tours of duty.
411h. Travel and transportation allowances: transportation of family members incident to the serious illness or injury of members.
411i. Travel and transportation allowances: parking expenses.
412. Appropriations for travel: may not be used for attendance at certain meetings.
413. Chairman and Vice Chairman of the Joint Chiefs of Staff.
414. Personal money allowance.
415. Uniform allowance: officers; initial allowance.
416. Uniform allowance: officers; additional allowances.
417. Uniform allowance: officers; general provisions.
418. Clothing allowance: enlisted members.
419. Civilian clothing allowance.
420. Allowances while participating in international sports.
421. Allowances: no increase while dependent is entitled to basic pay.
422. Cadets and midshipmen.
423. Validity of allowance payments based on purported marriages.
424. Band leaders.

425. United States Navy Band; United States Marine Corps Band: allowances while on concert tour.
427. Family separation allowance.
428. Allowance for recruiting expenses.
429. Travel and transportation allowances: minor dependent schooling.
430. Travel and transportation: dependent children of members stationed overseas.
431. Benefits for certain members assigned to the Defense Intelligence Agency.
432. Travel and transportation: members escorting certain dependents.
433. Allowance for muster duty.
434. Subsistence reimbursement relating to escorts of foreign arms control inspection teams.
435. Funeral honors duty: allowance.
436. Per diem allowance for lengthy or numerous deployments.

§ 401. Definitions

(a) DEPENDENT DEFINED.—In this chapter, the term "dependent", with respect to a member of a uniformed service, means the following persons:

(1) The spouse of the member.

(2) An unmarried child of the member who—

(A) is under 21 years of age;

(B) is incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than one-half of the child's support; or

(C) is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education approved by the Secretary concerned for purposes of this subparagraph, and is in fact dependent on the member for more than one-half of the child's support.

(3) A parent of the member if—

(A) the parent is in fact dependent on the member for more than one-half of the parent's support;

(B) the parent has been so dependent for a period prescribed by the Secretary concerned or became so dependent due to a change of circumstances arising after the member entered on active duty; and

(C) the dependency of the parent on the member is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary concerned.

(4) An unmarried person who—

(A) is placed in the legal custody of the member as a result of an order of a court of competent jurisdiction in the United States (or Puerto Rico or a possession of the United States) for a period of at least 12 consecutive months;

(B) either—

(i) has not attained the age of 21;

(ii) has not attained the age of 23 years and is enrolled in a full time course of study at an institution of higher learning approved by the Secretary concerned; 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 paragraph pursuant to clause (i) or (ii);

(C) is dependent on the member for over one-half of the person's support;

(D) resides with the 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 Secretary concerned may by regulation prescribe; and

(E) is not a dependent of a member under any other paragraph.

(b) OTHER DEFINITIONS.—For purposes of subsection (a):

(1) The term "child" includes—

(A) a stepchild of the member (except that such term does not include a stepchild after the divorce of the member from the stepchild's parent by blood);

(B) an adopted child of the member, including a child placed in the home of the member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member; and

(C) an illegitimate child of the member if the member's parentage of the child is established in accordance with criteria prescribed in regulations by the Secretary concerned.

(2) The term "parent" means—

(A) a natural parent of the member;

(B) a stepparent of the member;

(C) a parent of the member by adoption;

(D) a parent, stepparent, or adopted parent of the spouse of the member; and

(E) any other person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 469; P.L. 93–64, §§ 103, 104, July 9, 1973, 87 Stat. 148; P.L. 100–26, § 8(e)(7), Apr. 21, 1987, 101 Stat. 286; P.L. 102–190, § 621, Dec. 5, 1991, 105 Stat. 1377; P.L. 103–160, § 631(a), Nov. 30, 1993, 107 Stat. 1683; P.L. 103–337, § 701(b), Oct. 5, 1994, 108 Stat. 2797.)

§ 402. Basic allowance for subsistence

(a) ENTITLEMENT TO ALLOWANCE.—(1) Except as provided in paragraph (2) or otherwise provided by law, each member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for subsistence as set forth in this section.

(2) An enlisted member is not entitled to the basic allowance for subsistence during basic training.

(b) RATES OF ALLOWANCE BASED ON FOOD COSTS.—(1) Through December 31, 2001, the monthly rate of basic allowance for subsistence to be in effect for an enlisted member for a year (beginning on January 1 of that year) shall be the amount that is halfway between the following amounts, which are determined by the Secretary of Agriculture as of October 1 of the preceding year:

(A) The amount equal to the monthly cost of a moderate-cost food plan for a male in the United States who is between 20 and 50 years of age.

(B) The amount equal to the monthly cost of a liberal food plan for a male in the United States who is between 20 and 50 years of age.

(2) On and after January 1, 2002, the monthly rate of basic allowance for subsistence to be in effect for an enlisted member for a year (beginning on January 1 of that year) shall be equal to the sum of—

(A) the monthly rate of basic allowance for subsistence that was in effect for an enlisted member for the preceding year; plus

(B) the product of the monthly rate under subparagraph (A) and the percentage increase in the monthly cost of a liberal food plan for a male in the United States who is between 20 and 50 years of age over the preceding fiscal year, as determined by the Secretary of Agriculture each October 1.

(3) The monthly rate of basic allowance for subsistence to be in effect for an officer for a year (beginning on January 1 of that year) shall be the amount equal to the monthly rate of basic allowance for subsistence in effect for officers for the preceding year, increased by the same percentage by which the rate of basic allowance for subsistence for enlisted members for the preceding year is increased effective on such January 1.

(c) ADVANCE PAYMENT.—The allowance to an enlisted member may be paid in advance for a period of not more than three months.

(d) SPECIAL RULE FOR MEMBERS AUTHORIZED TO MESS SEPARATELY.—(1) In areas prescribed by 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, an enlisted member described in paragraph (2) is entitled to not more than the pro rata allowance in effect under paragraph (1) or (2) of subsection (b) for each meal the member buys from a source other than a messing facility of the United States.

(2) An enlisted member referred to in paragraph (1) is a member who is granted permission to mess separately and whose duties require the member to buy at least one meal from a source other than a messing facility of the United States.

(e) SPECIAL RULE FOR CERTAIN ENLISTED RESERVE MEMBERS.—Unless entitled to basic pay under section 204 of this title, an enlisted member of a reserve component may receive, at the discretion of the Secretary concerned, rations in kind, or a part thereof, when the member's instruction or duty periods, as described in section 206(a) of this title, total at least 8 hours in a calendar day. The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.

(f) POLICIES ON USE OF DINING AND MESSING FACILITIES.—The Secretary of Defense, in consultation with the Secretaries concerned, shall prescribe policies regarding use of dining and field messing facilities of the uniformed services.

(g) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the administration of this section. Before prescribing the regulations, the Secretary shall consult with each Secretary concerned.

(2) The regulations shall include the specific rates of basic allowance for subsistence required by subsection (b).

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 470; P.L. 89–444, § 2(2), June 9, 1966, 80 Stat. 198; P.L. 93–419, § 3(1)–(5), Sept. 19, 1974, 88 Stat. 1152; P.L. 96–513, § 411, Dec. 12, 1980, 94 Stat. 2905; P.L. 98–94, § 908(a), Sept. 24, 1983, 97 Stat. 637; P.L. 98–525, § 605, Oct. 19, 1984, 98 Stat. 2537; P.L. 98–557, § 17(d), Oct. 30, 1984, 98 Stat. 2868; P.L. 99–145, § 1303(b)(5), Nov. 8, 1985, 99 Stat. 740, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 602(a)–(c)(1), Feb. 10, 1996, 110 Stat. 356, 357; P.L. 105–85, § 602(a), Nov. 18, 1997, 111 Stat. 1771; P.L. 105–261, § 604(a), Oct. 16, 1998, 112 Stat. 2037; P.L. 106–398, § 1 (§ 603)), Oct. 30, 2000, 114 Stat. 1654A–144.)

Note: Subsections (c) through (f) of section 602 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, 37 U.S.C. 402 note), as amended by section 604(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2038) and section 1087(e)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–293), provide as follows:

(c)[1] TRANSITIONAL AUTHORITY TO PROVIDE BASIC ALLOWANCE FOR SUBSISTENCE.—

(1) TRANSITIONAL AUTHORITY.—Notwithstanding section 402 of title 37, United States Code, as amended by subsection (a), during the period beginning on January 1, 1998, and ending on the date determined under paragraph (2)—

(A) the basic allowance for subsistence shall not be paid under such section 402;

(B) a member of the uniformed services is entitled to the basic allowance for subsistence only as provided in subsection (d);

(C) an enlisted member of the uniformed services may be paid a partial basic allowance for subsistence as provided in subsection (e); and

(D) the rates of the basic allowance for subsistence are those rates determined under subsection (f).

(2) TERMINATION OF TRANSITIONAL AUTHORITY.—The transitional authority provided under paragraph (1) shall terminate on the first day of the month immediately following the first month for which the monthly equivalent of the rate of basic allowance for subsistence payable to enlisted members of the uniformed services (when permission to mess separately is granted), as determined under subsection (f)(2), is equal to or is exceeded by the amount that, except for paragraph (1)(A), would otherwise be the monthly rate of basic allowance for subsistence for enlisted members under section 402(b)(1) of title 37, United States Code, as amended by subsection (a).

(d) TRANSITIONAL ENTITLEMENT TO ALLOWANCE.—

(1) ENLISTED MEMBERS.—

(A) TYPES OF ENTITLEMENT.—An enlisted member is entitled to the basic allowance for subsistence, on a daily basis, under one or more of the following circumstances:

(i) When rations in kind are not available.

(ii) When permission to mess separately is granted.

(iii) When assigned to duty under emergency conditions where no messing facilities of the United States are available.

(B) OTHER ENTITLEMENT CIRCUMSTANCES.—An enlisted member is entitled to the allowance while on an authorized leave of absence, while confined in a hospital, or while performing travel under orders away from the member's designated post of duty other than field duty or sea duty (as defined in regulations prescribed by the Secretary of Defense). For purposes of the preceding sentence, a member shall not be considered to be performing travel under orders away from his designated post of duty if such member—

(i) is an enlisted member serving the member's first tour of active duty;

(ii) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

(iii) is not actually traveling between stations pursuant to orders directing a change of station.

(C) ADVANCE PAYMENT.—The allowance to an enlisted member, when authorized, may be paid in advance for a period of not more than three months.

(D) SPECIAL RULE FOR CERTAIN ENLISTED RESERVE MEMBERS.—Unless entitled to basic pay under section 204 of title 37, United States Code, an enlisted member of a reserve component (as defined in section 101(24) of such title) may receive, at the discretion of the Secretary concerned (as defined in section 101(5) of such title), rations in kind, or a part thereof, when the member's instruction or duty periods (as described in section 206(a) of

[1] Section 603(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–145) provides as follows:

(c) EARLY TERMINATION OF BAS TRANSITIONAL AUTHORITY.—Effective October 1, 2001, subsections (c) through (f) of section 602 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 37 U.S.C. 402 note) are repealed.

such title) total at least 8 hours in a calendar day. The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.

(2) OFFICERS.—An officer of a uniformed service who is entitled to basic pay is, at all times, entitled to the basic allowances for subsistence. An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to the same basic allowance for subsistence as is provided for an officer of the Navy, Air Force, Marine Corps, or Coast Guard, respectively.

(e) TRANSITIONAL AUTHORITY FOR PARTIAL ALLOWANCE.—

(1) ENLISTED MEMBERS FURNISHED SUBSISTENCE IN KIND.—The Secretary of Defense may provide in regulations for an enlisted member of a uniformed service to be paid a partial basic allowance for subsistence when—

(A) rations in kind are available to the member;

(B) the member is not granted permission to mess separately; or

(C) the member is assigned to duty under emergency conditions where messing facilities of the United States are available.

(2) MONTHLY PAYMENT.—Any partial basic allowance for subsistence authorized under paragraph (1) shall be calculated on a daily basis and paid on a monthly basis.

(f) TRANSITIONAL RATES.—

(1) ALLOWANCE FOR OFFICERS.—The monthly rate of basic allowance for subsistence for a year (beginning on January 1 of that year) that is payable to officers of the uniformed services shall be the amount that is equal to 101 percent of the rate of basic allowance for subsistence that was payable to officers of the uniformed services for the preceding year.

(2) ALLOWANCE FOR ENLISTED MEMBER WITH PERMISSION TO MESS SEPARATELY.—The monthly rate of basic allowance for subsistence for a year (beginning on January 1 of that year) that is payable to an enlisted member of the uniformed services entitled to the allowance under subsection (d)(1) shall be the amount that is equal to 101 percent of the rate of basic allowance for subsistence that was in effect for similarly situated enlisted members of the uniformed services for the preceding year.

(3) PARTIAL ALLOWANCE FOR OTHER ENLISTED MEMBERS.—The monthly rate of any partial basic allowance for subsistence for a year (beginning on January 1 of that year) payable to an enlisted member of the uniformed services eligible for the allowance under the regulations prescribed under subsection (e)(1) shall be the amount equal to the lesser of the following:

(A) The sum of—

(i) the partial basic allowance for subsistence in effect for the preceding year; and

(ii) the amount equal to the difference, if any, between—

(I) the monthly equivalent of the rate of basic allowance for subsistence that was in effect for the preceding year for members of the uniformed services above grade E–1 (when permission to mess separately is granted), increased by the same percentage by which the rates of basic pay for members of the uniformed services is increased for the current year; and

(II) the amount equal to 101 percent of the monthly equivalent of the rate of basic allowance for subsistence that was in effect for the previous year for members of the uniformed services above grade E–1 (when permission to mess separately is granted),

with the amount so determined under this clause multiplied by the number of members estimated to be entitled to receive basic allowance for subsistence under subsection (d) for the current year and then divided by the number of members estimated to be eligible for the partial allowance under the regulations prescribed under subsection (e)(1) for that year.

(B) The amount equal to the difference between—

(i) the amount that, except for subsection (c)(1)(A), would otherwise be the monthly rate of basic allowance for subsistence for enlisted members under section 402(b)(1) of title 37, United States Code; and

(ii) the amount equal to the monthly equivalent of the value of a daily ration, as determined by the Under Secretary of Defense (Comptroller) as of October 1 of the preceding year.

* * * * * * *

§ 402a. Supplemental subsistence allowance for low-income members with dependents

(a) SUPPLEMENTAL ALLOWANCE REQUIRED.—(1) The Secretary concerned shall increase the basic allowance for subsistence to which a member of the armed forces described in subsection (b) is otherwise entitled under section 402 of this title by an amount (in this section referred to as the "supplemental subsistence allowance") designed to remove the member's household from eligibility for benefits under the food stamp program.

(2) The supplemental subsistence allowance may not exceed $500 per month. In establishing the amount of the supplemental subsistence allowance to be paid an eligible member under this paragraph, the Secretary shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In the case of a member described in subsection (b) who establishes to the satisfaction of the Secretary concerned that the allotment of the member's household under the food stamp program, calculated in the absence of the supplemental subsistence allowance, would exceed the amount established by the Secretary concerned under paragraph (2), the amount of the supplemental subsistence allowance for the member shall be equal to the lesser of the following:

(A) The value of that allotment.

(B) $500.

(b) MEMBERS ENTITLED TO ALLOWANCE.—(1) Subject to subsection (d), a member of the armed forces is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member's income, together with the income of the rest of the member's household (if any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food Stamp Act of 1977 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the food stamp program.

(2) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary—

(A) shall not take into consideration the amount of the supplemental subsistence allowance payable under this section; but

(B) shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(c) APPLICATION FOR ALLOWANCE.—To request the supplemental subsistence allowance, a member shall submit an application to the Secretary concerned in such form and containing such information as the Secretary concerned may prescribe. A member applying for the supplemental subsistence allowance shall furnish

such evidence regarding the member's satisfaction of the eligibility criteria under subsection (b) as the Secretary concerned may require.

(d) EFFECTIVE PERIOD.—The entitlement of a member to receive the supplemental subsistence allowance terminates upon the occurrence of any of the following events, even though the member continues to meet the eligibility criteria described in subsection (b):

(1) Payment of the supplemental subsistence allowance for 12 consecutive months.

(2) Promotion of the member to a higher grade.

(3) Transfer of the member in a permanent change of station.

(e) REAPPLICATION.—Upon the termination of the effective period of the supplemental subsistence allowance for a member, or in anticipation of the imminent termination of the allowance, a member may reapply for the allowance under subsection (c), and the Secretary concerned shall approve the application and resume payment of the allowance to the member, if the member continues to meet, or once again meets, the eligibility criteria described in subsection (b).

(f) REPORTING REQUIREMENT.—Not later than March 1 of each year after 2001, the Secretary of Defense shall submit to Congress a report specifying the number of members of the armed forces who received, at any time during the preceding year, the supplemental subsistence allowance. In preparing the report, the Secretary of Defense shall consult with the Secretary of Transportation. No report is required under this subsection after March 1, 2006.

(g) DEFINITIONS.—In this section:

(1) The term "Secretary concerned" means—

(A) the Secretary of Defense; and

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

(2) The terms "allotment" and "household" have the meanings given those terms in section 3 of the Food Stamp Act of 1977 (7 U.S.C. 2012).

(3) The term "food stamp program" means the program established pursuant to section 4 of the Food Stamp Act of 1977 (7 U.S.C. 2013).

(h) TERMINATION OF AUTHORITY.—No supplemental subsistence allowance may be provided under this section after September 30, 2006.

(Added P.L. 106–398, § 1 (§ 604), Oct. 30, 2000, 114 Stat. 1654A–145.)

§ 403. Basic allowance for housing [1]

(a) GENERAL ENTITLEMENT.—(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic

[1] Section 603(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, approved November 18, 1997; 37 U.S.C. 403 note), as amended by section 605(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–148), provides as follows:

(b) TRANSITION TO BASIC ALLOWANCE FOR HOUSING.—The Secretary of Defense shall develop and implement a plan to incrementally manage the rate of growth of the various components of the basic allowance for housing authorized by section 403 of title 37, United States Code (as

Continued

pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—(1) The Secretary of Defense shall prescribe the rates of the basic allowance for housing that are applicable for the various military housing areas in the United States. The rates for an area shall be based on the costs of adequate housing determined for the area under paragraph (2).

(2) The Secretary of Defense shall determine the costs of adequate housing in a military housing area in the United States for all members of the uniformed services entitled to a basic allowance for housing in that area. The Secretary shall base the determination upon the costs of adequate housing for civilians with comparable income levels in the same area. After June 30, 2001, the Secretary may not differentiate between members with dependents in pay grades E–1 through E–4 in determining what constitutes adequate housing for members.

(3)[1] The total amount that may be paid for a fiscal year for the basic allowance for housing under this subsection may not be less than the product of—

(A) the total amount authorized to be paid for such allowance for the preceding fiscal year; and

(B) a fraction—

(i) the numerator of which is the index of the national average monthly cost of housing for June of the preceding fiscal year; and

(ii) the denominator of which is the index of the national average monthly cost of housing for June of the second preceding fiscal year.

---

amended by subsection (a)), during a transition period of not more than eight years. During the transition period, the Secretary may continue to use the authorities provided under sections 403, 403a, 405(b), and 427(a) of title 37, United States Code (as in effect on the day before the date of the enactment of this Act), but subject to such modifications as the Secretary considers necessary, to provide allowances for members of the uniformed services.

[1] Section 606 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–148) provide as follows:

SEC. 606. ADDITIONAL AMOUNT AVAILABLE FOR FISCAL YEAR 2001 INCREASE IN BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.

In addition to the amount determined by the Secretary of Defense under section 403(b)(3) of title 37, United States Code, as amended by section 605(b), to be the total amount to be paid during fiscal year 2001 for the basic allowance for housing for military housing areas inside the United States, $30,000,000 of the amount authorized to be appropriated by section 421 for military personnel shall be used by the Secretary to further increase the total amount available for the basic allowance for housing for military housing areas inside the United States.

(4) An adjustment in the rates of the basic allowance for housing under this subsection as a result of the Secretary's redetermination of housing costs in an area shall take effect on the same date as the effective date of the next increase in basic pay under section 1009 of this title or other provision of law.

(5) On and after July 1, 2001, the Secretary of Defense shall establish a single monthly rate for members of the uniformed services with dependents in pay grades E–1 through E–4 in the same military housing area. The rate shall be consistent with the rates paid to members in pay grades other than pay grades E–1 through E–4 and shall be based on the following:

(A) The average cost of a two-bedroom apartment in that military housing area.

(B) One-half of the difference between the average cost of a two-bedroom townhouse in that area and the amount determined in subparagraph (A).

(6) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing within an area of the United States, the monthly amount of the allowance for the member may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

(7) In the case of a member who is assigned to duty inside the United States, the location or the circumstances of which make it necessary that the member be reassigned under the conditions of low-cost or no-cost permanent change of station or permanent change of assignment, the member may be treated as if the member were not reassigned if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the cost of housing in the area to which the member is reassigned.

(c) BASIC ALLOWANCE FOR HOUSING OUTSIDE THE UNITED STATES.—(1) The Secretary of Defense may prescribe an overseas basic allowance for housing for a member of a uniformed service who is on duty outside of the United States. The Secretary shall establish the basic allowance for housing under this subsection on the basis of housing costs in the overseas area in which the member is assigned.

(2) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing in an overseas area and the actual monthly cost of housing for the member is not reduced, the monthly amount of the allowance in an area outside the United States may not be reduced as a result of changes in housing costs in the area or the promotion of the member. The monthly amount of the allowance may be adjusted to reflect changes in currency rates.

(3)(A) In the case of a member of the uniformed services authorized to receive an allowance under paragraph (1), the Secretary concerned may make a lump-sum payment to the member for required deposits and advance rent, and for expenses relating thereto, that are—

(i) incurred by the member in occupying private housing outside of the United States; and

(ii) authorized or approved under regulations prescribed by the Secretary concerned.

(B) Expenses for which a member may be reimbursed under this paragraph may include losses relating to housing that are sustained by the member as a result of fluctuations in the relative value of the currencies of the United States and the foreign country in which the housing is located.

(C) The Secretary concerned shall recoup the full amount of any deposit or advance rent payments made by the Secretary under subparagraph (A), including any gain resulting from currency fluctuations between the time of payment and the time of recoupment.

(d) BASIC ALLOWANCE FOR HOUSING WHEN DEPENDENTS ARE UNABLE TO ACCOMPANY MEMBER.—(1) A member of a uniformed service with dependents who is on permanent duty at a location described in paragraph (2) is entitled to a family separation basic allowance for housing under this subsection at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to that location, for members in the same grade at that location without dependents.

(2) A permanent duty location referred to in paragraph (1) is a location—

(A) to which the movement of the member's dependents is not authorized at the expense of the United States under section 406 of this title, and the member's dependents do not reside at or near the location; and

(B) at which quarters of the United States are not available for assignment to the member.

(3) If a member with dependents is assigned to duty in an area that is different from the area in which the member's dependents reside, the member is entitled to a basic allowance for housing as provided in subsection (b) or (c), whichever applies to the member, subject to the following:

(A) If the member's assignment to duty in that area, or the circumstances of that assignment, require the member's dependents to reside in a different area, as determined by the Secretary concerned, the amount of the basic allowance for housing for the member shall be based on the area in which the dependents reside or the member's last duty station, whichever the Secretary concerned determines to be most equitable.

(B) If the member's assignment to duty in that area is under the conditions of a low-cost or no-cost permanent change of station or permanent change of assignment, the amount of the basic allowance for housing for the member shall be based on the member's last duty station if the Secretary concerned determines that it would be inequitable to base the allowance on the cost of housing in the area to which the member is reassigned.

(4) The family separation basic allowance for housing under this subsection shall be in addition to any other allowance or per diem that the member is otherwise entitled to receive under this title. A member may receive a basic allowance for housing under both paragraphs (1) and (3).

(e) EFFECT OF ASSIGNMENT TO QUARTERS.—(1) Except as otherwise provided by law, a member of a uniformed service who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service appropriate to the grade, rank, or rating of the member and adequate for the member and dependents of the member, if with dependents, is not entitled to a basic allowance for housing.

(2) A member without dependents who is in a pay grade above pay grade E–6 and who is assigned to quarters in the United States or a housing facility under the jurisdiction of a uniformed service, appropriate to the grade or rank of the member and adequate for the member, may elect not to occupy those quarters and instead to receive the basic allowance for housing prescribed for the member's pay grade by this section.

(3) A member without dependents who is in pay grade E–6 and who is assigned to quarters of the United States that do not meet the minimum adequacy standards established by the Secretary of Defense for members in such pay grade, or to a housing facility under the jurisdiction of a uniformed service that does not meet such standards, may elect not to occupy such quarters or facility and instead to receive the basic allowance for housing prescribed for the member's pay grade under this section.

(4) The Secretary concerned may deny the right to make an election under paragraph (2) or (3) if the Secretary determines that the exercise of such an election would adversely affect a training mission, military discipline, or military readiness.

(5) A member with dependents who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service may be paid the basic allowance for housing if, because of orders of competent authority, the dependents are prevented from occupying those quarters.

(f) INELIGIBILITY DURING INITIAL FIELD DUTY OR SEA DUTY.—(1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for housing while on that initial field duty unless the commanding officer of the member certifies that the member was necessarily required to procure quarters at the member's expense.

(2)(A) Except as provided in subparagraphs (B) and (C), a member of a uniformed service without dependents who is in a pay grade below pay grade E–6 is not entitled to a basic allowance for housing while the member is on sea duty.

(B) Under regulations prescribed by the Secretary concerned, the Secretary may authorize the payment of a basic allowance for housing to a member of a uniformed service without dependents who is serving in pay grade E–4 or E–5 and is assigned to sea duty. In prescribing regulations under this subparagraph, the Secretary concerned shall consider the availability of quarters for members serving in grades E–4 and E–5.

(C) Notwithstanding section 421 of this title, two members of the uniformed services in a pay grade below pay grade E–6 who are married to each other, have no other dependents, and are simultaneously assigned to sea duty are jointly entitled to one basic allowance for housing during the period of such simultaneous sea

duty. The amount of the allowance shall be based on the without dependents rate for the pay grade of the senior member of the couple. However, this subparagraph shall not apply to a couple if one or both of the members are entitled to a basic allowance for housing under subparagraph (B).

(3) 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, shall prescribe regulations defining the terms "field duty" and "sea duty" for purposes of this section.

(g) RESERVE MEMBERS.—(1) A member of a reserve component without dependents who is called or ordered to active duty in support of a contingency operation, or a retired member without dependents who is ordered to active duty under section 688(a) of title 10 in support of a contingency operation, may not be denied a basic allowance for housing if, because of that call or order, the member is unable to continue to occupy a residence—

(A) which is maintained as the primary residence of the member at the time of the call or order; and

(B) which is owned by the member or for which the member is responsible for rental payments.

(2) Paragraph (1) shall not apply if the member is authorized transportation of household goods under section 406 of this title as part of the call or order to active duty described in such paragraph.

(3) The Secretary of Defense shall establish a rate of basic allowance for housing to be paid to a member of a reserve component while the member serves on active duty under a call or order to active duty specifying a period of less than 140 days, unless the call or order to active duty is in support of a contingency operation.

(h) RENTAL OF PUBLIC QUARTERS.—Notwithstanding any other law (including those restricting the occupancy of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades, or by members, and their dependents, of the National Oceanic and Atmospheric Administration and the Public Health Service), a member of a uniformed service, and the dependents of the member, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignment to an occupancy without charge by such a member and the dependents of the member, if any. Such a member may not, because of occupancy under this subsection, be deprived of any money allowance to which the member is otherwise entitled for the rental of quarters.

(i) TEMPORARY HOUSING ALLOWANCE WHILE IN TRAVEL OR LEAVE STATUS.—A member of a uniformed service who is in a pay grade E–4 (4 or more years of service) or above is entitled to a temporary basic allowance for housing (at a rate determined by the Secretary of Defense) while the member is in a travel or leave status between permanent duty stations, including time granted as delay en route or proceed time, when the member is not assigned to quarters of the United States.

(j) AVIATION CADETS.—The eligibility of an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard for a basic

allowance for housing shall be determined as if the aviation cadet were a member of the uniformed services in pay grade E–4.

(k) ADMINISTRATION.—(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2) The Secretary concerned may make such determinations as may be necessary to administer this section, including determinations of dependency and relationship. When warranted by the circumstances, the Secretary concerned may reconsider and change or modify any such determination. The authority of the Secretary concerned under this subsection may be delegated. Any determination made under this section with regard to a member of the uniformed services is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

(3) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fees established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 25-year period beginning with the completion of such construction.

(l) TEMPORARY CONTINUATION OF ALLOWANCE FOR DEPENDENTS OF MEMBERS DYING ON ACTIVE DUTY.—(1) The Secretary of Defense, or the Secretary of Transportation in the case of the Coast Guard when not operating as a service in the Navy, may allow the dependents of a member of the armed forces who dies on active duty and whose dependents are occupying family housing provided by the Department of Defense, or by the Department of Transportation in the case of the Coast Guard, other than on a rental basis on the date of the member's death to continue to occupy such housing without charge for a period of 180 days.

(2) The Secretary concerned may pay a basic allowance for housing (at the rate that is payable for members of the same grade and dependency status as the deceased member for the area where the dependents are residing) to the dependents of a member of the uniformed services who dies while on active duty and whose dependents—

(A) are not occupying a housing facility under the jurisdiction of a uniformed service on the date of the member's death;

(B) are occupying such housing on a rental basis on such date; or

(C) vacate such housing sooner than 180 days after the date of the member's death.

(3) The payment of the allowance under paragraph (2) shall terminate 180 days after the date of the member's death.

(m) MEMBERS PAYING CHILD SUPPORT.—(1) A member of a uniformed service with dependents may not be paid a basic allowance for housing at the with dependents rate solely by reason of the payment of child support by the member if—

(A) the member is assigned to a housing facility under the jurisdiction of a uniformed service; or

(B) the member is assigned to sea duty, and elects not to occupy assigned quarters for unaccompanied personnel, unless the member is in a pay grade above E–3.

(2) A member of a uniformed service assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service who is not otherwise authorized a basic allowance for housing and who pays child support is entitled to the basic allowance for housing differential, except for months for which the amount payable for the child support is less than the rate of the differential. Payment of a basic allowance for housing differential does not affect any entitlement of the member to a partial allowance for quarters under subsection (n).

(3) The basic allowance for housing differential to which a member is entitled under paragraph (2) is the amount equal to the difference between—

(A) the rate of the basic allowance for quarters (with dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date); and

(B) the rate of the basic allowance for quarters (without dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date).

(4) Whenever the rates of basic pay for members of the uniformed services are increased, the monthly amount of the basic allowance for housing differential computed under paragraph (3) shall be increased by the average percentage increase in the rates of basic pay. The effective date of the increase shall be the same date as the effective date of the increase in the rates of basic pay.

(5) In the case of two members, who have one or more common dependents (and no others), who are not married to each other, and one of whom pays child support to the other, the amount of the basic allowance for housing paid to each member under this section shall be reduced in accordance with regulations prescribed by the Secretary of Defense. The total amount of the basic allowances for housing paid to the two members may not exceed the sum of the amounts of the allowance to which each member would be otherwise entitled under this section.

(n) PARTIAL ALLOWANCE FOR MEMBERS WITHOUT DEPENDENTS.—(1) A member of a uniformed service without dependents who is not entitled to receive a basic allowance for housing under subsection (b), (c), or (d) is entitled to a partial basic allowance for housing at a rate determined by the Secretary of Defense under paragraph (2).

(2) The rate of the partial basic allowance for housing is the partial rate of the basic allowance for quarters for the member's pay grade as such partial rate was in effect on December 31, 1997, under section 1009(c)(2) of this title (as such section was in effect on such date).

(Added P.L. 87–649, Sept. 7, 1962, 76 Stat. 470, and amended P.L. 88–132, § 10, Oct. 2, 1963, 77 Stat. 216; P.L. 89–718, §§ 49(a)(1), 54, Nov. 2, 1966, 80 Stat. 1121, 1122; P.L. 90–207, § 1(3), Dec. 16, 1967, 81 Stat. 651; P.L. 92–129, § 204, Sept. 28, 1971, 85 Stat. 358; P.L. 93–64, § 105, July 9, 1973, 87 Stat. 148; P.L. 93–419, § 3(6), Sept. 19, 1974, 88 Stat. 1152; P.L. 96–343, § 4(a)(1), (2), Sept. 8, 1980, 94 Stat. 1125; P.L. 96–513, § 516(10), Dec. 12, 1980, 94 Stat. 2938; P.L. 96–579, §§ 6(a)–(c), 7, Dec. 23, 1980, 94 Stat. 3367, 3368; P.L. 97–22, § 11(b)(2), July 10, 1981, 95 Stat. 138; P.L. 98–94, § 907(a), Sept. 24, 1983, 97 Stat. 637; P.L. 98–525, §§ 602(c),

604(a), Oct. 19, 1984, 98 Stat. 2534, 2537; P.L. 99–145, §§ 604(a), 605(a), § 809(b), § 1303(b)(6), Nov. 8, 1985, 99 Stat. 638, 681, 740; P.L. 99–227, § 1, Dec. 28, 1985, 99 Stat. 1745; P.L. 100–26, § 8(d)(5), Apr. 21, 1987, 101 Stat. 285, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 602(a), 604(a) and 632(a), Dec. 5, 1991, 105 Stat. 1373, 1374 and 1380; P.L. 103–337, § 604(a)–(b), Oct. 5, 1994, 108 Stat. 2782; P.L. 104–106, §§ 603(a), 604(a), Feb. 10, 1996, 110 Stat. 357, 358; P.L. 104–201, §§ 604 (a)–(c), 605 Sept. 23, 1996, 110 Stat. 2540, 2541; P.L. 105–85, § 603(a), Nov. 18, 1997, 111 Stat. 1775; P.L. 105–261, § 603(a), Oct. 16, 1998, 112 Stat. 2037; P.L. 106–398, § 1 (§§ 605(a)–(d), 607, 608, 1087(b)(2)), Oct. 30, 2000, 114 Stat. 1654A–147, 148, 149, 292.)

§ 403b. Cost-of-living allowance in the continental United States

(a) PAYMENT AUTHORIZED.—The Secretary concerned may pay a cost-of-living allowance to the eligible members of a uniformed service under the jurisdiction of the Secretary.

(b) ELIGIBLE MEMBERS.—The following members are eligible to receive a cost-of-living allowance under this section:

(1) A member assigned to a high cost area in the continental United States.

(2) A member assigned to an unaccompanied tour of duty outside the continental United States if the primary dependent of the member resides in a high cost area in the continental United States.

(3) A member assigned to duty in the continental United States if the Secretary of the uniformed service concerned determines that—

(A) the primary dependent of the member must reside in a high cost area in the continental United States by reason of the member's duty location or other circumstances; and

(B) it would be inequitable for the member's eligibility for the allowance to be determined on the basis of the duty location of the member.

(c) HIGH COST AREA DEFINED.—An area is a high cost area for a fiscal year for purposes of this section if the uniformed services cost of living for that area for the base period exceeds the average cost of living in the continental United States for such base period by at least the threshold percentage. The Secretary of Defense, in consultation with the other administering Secretaries, shall establish the threshold percentage, except that the threshold percentage may not be less than 8 percent. The administering Secretaries shall prescribe a higher threshold percentage to be applied for a fiscal year when it is necessary to do so in order to ensure that the total amount of the payments of the cost-of-living allowance made to members of the uniformed services under this section for such fiscal year does not exceed the total amount available to all uniformed services for that fiscal year for paying such allowance.

(d) AMOUNT OF ALLOWANCE.—The cost-of-living allowance that may be paid to a member for a high cost area for a fiscal year shall be the amount that is equal to the product of—

(1) the amount of the average spendable income determined applicable for the regular military compensation level of such member under subsection (g); and

(2) the percentage equal to the excess of—

(A) the percentage by which the uniformed services cost of living for the member's high cost area for the base

period exceeds the average cost of living in the continental United States for such base period, over

(B) the threshold percentage applicable to such fiscal year under subsection (c).

(e) LIMITATION TO ONE ALLOWANCE.—If primary dependents of a member reside separately in different high cost areas—

(1) the member may be paid only one cost-of-living allowance under this section; and

(2) the cost-of-living allowance payable to the member shall be the highest of the amounts computed under this section for such high cost areas.

(f) SERVICE NOT COVERED.—(1) A cost-of-living allowance may not be paid a member under this section for the days authorized for travel of the member in connection with a permanent change of duty station.

(2) A member of a reserve component is not eligible for a cost-of-living allowance under this section unless the member is on active duty under a call or order to active duty that—

(A) specifies a period of 140 days or more; or

(B) states that the call or order to active duty is in support of a contingency operation.

(g) AVERAGE SPENDABLE INCOME.—The Secretary of Defense shall determine, using a methodology and assumptions that the Secretary considers appropriate, the amounts of average spendable income of members of the uniformed services for various ranges of regular military compensation. For purposes of this subsection, spendable income is the total amount of regular military compensation that is available for purchase of goods and services after allocation of amounts for taxes, insurance, housing, gifts and contributions, and savings.

(h) JOINT REGULATIONS.—The Secretary of Defense and the other administering Secretaries shall jointly prescribe regulations to carry out this section.

(i) OTHER DEFINITIONS.—In this section:

(1) The term "primary dependent", with respect to a member, means—

(A) the member's spouse; or

(B) in the case of an unmarried member, a dependent described in paragraph (2) or (4) of section 401(a) of this title.

(2) The term "cost of living" means a price index selected by the Secretary of Defense, in consultation with the other administering Secretaries, from among the following indices:

(A) The Consumer Price Index (all items–United States city average) published monthly by the Bureau of Labor Statistics.

(B) Any other index developed in the private sector that the Secretary of Defense, in consultation with the other administering Secretaries, determines is comparable to the Consumer Price Index and is appropriate for use for purposes of this section.

(3) The term "uniformed services cost of living" means the price index selected as described in paragraph (2) and adjusted as the Secretary of Defense, in consultation with the other

administering Secretaries, considers appropriate to reflect variations between expenses of members of the uniformed services (as offset by the basic allowance for subsistence) and the corresponding expenses of persons not members of the uniformed services with regard to the following:

(A) Nonhousing costs (including costs of transportation, goods, and services, taking into consideration savings attributable to use of such military facilities as commissary stores and exchange stores).

(B) Average income tax paid.

(C) Cost of health care.

(4) The term "base period", with respect to a fiscal year, means the 12-month period ending on June 30 of the year in which such fiscal year begins.

(5) The term "administering Secretaries" means the following:

(A) 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).

(B) The Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) The Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration.

(D) The Secretary of Health and Human Services, with respect to the Public Health Service.

(6) The term "continental United States" means the 48 contiguous States and the District of Columbia.

(P.L. 103–337, § 602(a)(1), Oct. 5, 1994, 108 Stat. 2779.)

§ 404. Travel and transportation allowances: general

(a) Except as provided in subsection (f) and under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation—

(1) upon a change of permanent station, or otherwise, or when away from his designated post of duty regardless of the length of time he is away from that post;

(2) upon appointment, call to active duty, enlistment, or induction, from his home or from the place from which called or ordered to active duty to his first station;

(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed;

(4) when away from home to perform duty, including duty by 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, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title; and

(5) when not on active duty, if assigned to a Reserve school, and attending a reserve training meeting for the purpose of performing duties as an instructor at such meeting, if such meeting is 100 or more miles from the site at which the member would attend paid drills of the Reserve school to which he is assigned.

(b)(1) The Secretaries concerned may prescribe—

(A) the conditions under which travel and transportation allowances are authorized, including advance payments thereof; and

(B) the allowances for the kinds of travel, but not more than the amounts authorized in this section.

(2) In prescribing such conditions and allowances, the Secretaries concerned shall provide that a member who is performing travel under orders away from his designated post of duty and who is authorized a per diem under clause (2) of subsection (d) shall be paid for the meals portion of that per diem in a cash amount at a rate that is not less than the rate established under section 1011(a) of this title for meals sold to members. The preceding sentence shall not apply with respect to a member on field duty or sea duty (as defined in regulations prescribed under section 403(f)(3) of this title) or a member of a unit with respect to which the Secretary concerned has determined that unit messing is essential to the accomplishment of the unit's training and readiness.

(c)(1) Under uniform regulations prescribed by the Secretaries concerned and as provided in paragraph (2), a member who—

(A) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(B) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from active duty with separation pay or readjustment pay; or

(C) is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001,

may, not later than one year from the date he is so retired, placed on that list, involuntarily separated, discharged, or released, except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of the travel and transportation allowances authorized by subsection (a).

(2) A member authorized under paragraph (1) to select a home for the purposes of such allowances may select as his home—

(A) any place within the United States;

(B) the place outside the United States from which the member was called or ordered to active duty to his first duty station; or

(C) any other place.

However, if the member selects as his home a place other than a place described in clause (A) or (B) of the preceding sentence, the travel and transportation allowances authorized by subsection (a) may not exceed the allowances which would be payable if the place

selected as his home were in the United States (other than Hawaii or Alaska).

(d)(1) The travel and transportation allowances authorized for each kind of travel may not be more than one of the following:

(A) Transportation in kind, reimbursement therefor, or, under regulations prescribed by the Secretaries concerned, when travel by privately owned conveyance is authorized or approved as more advantageous to the Government, a monetary allowance in place of the cost of transportation, at the rates provided in section 5704 of title 5.

(B) Transportation in kind, reimbursement therefor, or a monetary allowance as provided in subparagraph (A), plus a payment in lieu of subsistence as provided in paragraph (2) in an amount sufficient to meet normal and necessary expenses in the area to which travel is performed.

(C) A mileage allowance at a rate per mile prescribed by the Secretaries concerned and based on distances established under subparagraph (A).

(2) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) is entitled to any of the following:

(A) A per diem allowance at a rate not to exceed that established by the Secretaries concerned.

(B) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Secretaries concerned.

(C) A combination of payments described in subparagraphs (A) and (B).

(3) A per diem allowance or maximum amount of reimbursement established for purposes of paragraph (2) shall be established, to the extent feasible, by locality.

(4) For travel consuming less than a full day, the payment prescribed by regulation under paragraph (2) shall be allocated in such manner as the Secretaries concerned prescribe.

(e) A member who is on duty with, or is undergoing training for, the Air Mobility Command, the Marine Corps Transport Squadrons, the Fleet Tactical Support Squadrons, the Naval Aircraft Ferrying Squadrons, or any other unit determined by the Secretary concerned to be performing duties similar to the duties performed by such command or squadrons, and who is away from his permanent station, may be paid a per diem in lieu of subsistence in an amount not more than the amount to which he would be entitled if he were performing travel in connection with temporary duty without, in either case, the issuance of orders for specific travel.

(f)(1) The travel and transportation allowances authorized under this section for a member who is separated from the service or released from active duty may be paid or provided only for travel actually performed.

(2)(A) Except as provided in subparagraph (B), a member who is separated from the service or released from active duty and who—

(i) on the date of his separation from the service or release from active duty, has not served on active duty for a period of time equal to at least 90 percent of the period of time for which he initially enlisted or otherwise initially agreed to serve; or

(ii) is separated from the service or released from active duty under other than honorable conditions, as determined by the Secretary concerned;

may be provided travel and transportation under this section only by transportation in kind by the least expensive mode of transportation available or by a monetary allowance that does not exceed the cost to the Government of such transportation in kind.

(B) Subparagraph (A) does not apply to a member—

(i) who is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(ii) who is separated from the service or released from active duty for a medical condition affecting the member, as determined by the Secretary concerned;

(iii) who is separated from the service or released from active duty because the period of time for which the member initially enlisted or otherwise initially agreed to serve has been reduced by the Secretary concerned and is separated or released under honorable conditions;

(iv) who is discharged under section 1173 of title 10; or

(v) who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001.

(3) For purposes of entitlement to per diem in place of subsistence under subsection (d)(2), a member shall not be considered under subsection (a)(1) to be performing travel under orders away from his designated post of duty if such member—

(A) is an enlisted member serving his first tour of active duty;

(B) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

(C) is not actually traveling between stations pursuant to orders directing a change of station.

(g)(1) Subject to paragraph (2), a member of the armed forces accompanying a Member of Congress or a congressional employee on official travel may be authorized reimbursement for actual travel and transportation expenses incurred for such travel.

(2) The reimbursement authorized in paragraph (1) may be paid—

(A) at a rate that does not exceed the rate approved for official congressional travel; and

(B) only when the travel of the member is directed or approved by the Secretary of Defense or the Secretary concerned.

(3) In this subsection:

(A) 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.

(B) The term "congressional employee" means an employee of a Member of Congress or an employee of Congress.

(h) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) is entitled to reimbursement for parking fees, ferry fares, and bridge, road, and tunnel tolls actually incurred incident to such travel.

(i)(1) In the case of a member of a reserve component performing active duty for training or inactive-duty training who is not otherwise entitled to travel and transportation allowances in connection with such duty under subsection (a), the Secretary concerned may reimburse the member for housing service charge expenses incurred by the member in occupying transient government housing during the performance of such duty. If transient government housing is unavailable or inadequate, the Secretary concerned may provide the member with lodging in kind in the same manner as members entitled to such allowances under subsection (a).

(2) Any payment or other benefit under this subsection shall be provided in accordance with regulations prescribed by the Secretaries concerned.

(3) The Secretary may pay service charge expenses under paragraph (1) and expenses of providing lodging in kind under such paragraph out of funds appropriated for operation and maintenance for the reserve component concerned. Use of Government charge cards is authorized for payment of these expenses.

(4) Decisions regarding the availability or adequacy of government housing at a military installation under paragraph (1) shall be made by the installation commander.

(j) In this section, the term "involuntarily separated" has the meaning given that term in section 1141 of title 10.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 472; P.L. 89–680, § 1(1), Oct. 15, 1966, 80 Stat. 957; P.L. 89–718, §§ 55, 56, Nov. 2, 1966, 80 Stat. 1122, 1123; P.L. 90–168, § 3, Dec. 1, 1967, 81 Stat. 525; P.L. 91–183, Dec. 30, 1969, 83 Stat. 840; P.L. 94–296, § 1, May 29, 1976, 90 Stat. 584; P.L. 96–342, § 807(a), Sept. 8, 1980, 94 Stat. 1096; P.L. 96–343, § 5(a), Sept. 8, 1980, 94 Stat. 1126; P.L. 97–60, § 121(a), Oct. 14, 1981, 95 Stat. 999; P.L. 98–94, § 908(b), Sept. 24, 1983, 97 Stat. 637; P.L. 98–525, § 533(g), § 613(a), § 1402(c), Oct. 19, 1984, 98 Stat. 2528, 2539, 2621; P.L. 99–145, § 612(a), Nov. 8, 1985, 99 Stat. 639; amended identically P.L. 99–500, 99–591, 99–661, §§ 101(c) [§ 9073], 101(c) [§ 9073], 1343(b)(2), Oct. 18, Oct. 30, Nov. 14, 1986, 100 Stat. 1783–113, 3341–113, 3995; P.L. 100–26, § 8(d)(6), Apr. 21, 1987, 101 Stat. 285; P.L. 99–661, § 614(a), Nov. 14, 1986, 100 Stat. 3879; P.L. 100–26, § 8(a), (d)(6), Apr. 21, 1987, 101 Stat. 284, 285; P.L. 100–180, § 617(a), Dec. 4, 1987, 101 Stat. 1096; P.L. 101–189, § 621, Nov. 29, 1989, 103 Stat. 1446; P.L. 101–510, § 503(a), Nov. 5, 1990, 104 Stat. 1558, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 624, Oct. 23, 1992, 106 Stat. 2423; P.L. 103–160, § 561(l)(1), Nov. 30, 1993, 107 Stat. 1668; P.L. 103–337, § 621 and 622, Oct. 5, 1994, 108 Stat. 2784; P.L. 104–106, § 621, Feb. 10, 1996, 110 Stat. 363; P.L. 104–201, § 1252, Sept. 23, 1996, 110 Stat. 2698; P.L. 105–85, § 602(b)(1), Nov. 18, 1997, 111 Stat. 1772; P.L. 105–261, § 561(f), Oct. 16, 1998, 112 Stat. 2025; P.L. 106–65, § 631, Oct. 5, 1999, 113 Stat. 661; P.L. 106–398, § 1 (§§ 571(f), 1087(b)(3)), Oct. 30, 2000, 114 Stat. 1654A–134, 292.)

§ 404a. Travel and transportation allowances: temporary lodging expenses

(a) PAYMENT OR REIMBURSEMENT OF SUBSISTENCE EXPENSES.—(1) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service who is ordered to make a change of permanent station described in paragraph (2) shall be paid or reimbursed for subsistence expenses of the member and the member's dependents for the period (subject to subsection (c)) for which the member and dependents occupy temporary quarters incident to that change of permanent station.

(2) Paragraph (1) applies to the following:

(A) A permanent change of station from any duty station to a duty station in the United States (other than Hawaii or Alaska).

(B) A permanent change of station from a duty station in the United States (other than Hawaii or Alaska) to a duty station outside the United States or in Hawaii or Alaska.

(C) In the case of an enlisted member who is reporting to the member's first permanent duty station, the change from the member's home of record or initial technical school to that first permanent duty station.

(b) PAYMENT IN ADVANCE.—The Secretary concerned may make any payment for subsistence expenses to a member under this section in advance of the member actually incurring the expenses. The amount of an advance payment made to a member shall be computed on the basis of the Secretary's determination of the average number of days that members and their dependents occupy temporary quarters under the circumstances applicable to the member and the member's dependents.

(c) MAXIMUM PAYMENT PERIOD.—(1) In the case of a change of permanent station described in subparagraph (A) or (C) of subsection (a)(2), the period for which subsistence expenses are to be paid or reimbursed under this section may not exceed 10 days.

(2) In the case of a change of permanent station described in subsection (a)(2)(B)—

(A) the period for which such expenses are to be paid or reimbursed under this section may not exceed five days; and

(B) such payment or reimbursement may be provided only for expenses incurred before leaving the United States (other than Hawaii or Alaska).

(d) DAILY SUBSISTENCE RATES.—Regulations prescribed under subsection (a) shall prescribe average daily subsistence rates for purposes of this section for the member and for each dependent. Such rates may not exceed the maximum per diem rates prescribed under section 404(d) of this title for the area where the temporary quarters are located.

(e) MAXIMUM DAILY PAYMENT.—A member may not be paid or reimbursed more that $110 a day under this section.

(Added P.L. 97–60, § 122(a)(1), Oct. 14, 1981, 95 Stat. 1002, amended P.L. 99–145, § 613(a), Nov. 8, 1985, 99 Stat. 640, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 621, Oct. 23, 1992, 106 Stat. 2422; P.L. 103–160, § 621, Nov. 30, 1993, 107 Stat. 1682; P.L. 106–65, § 632, Oct. 5, 1999, 113 Stat. 661; P.L. 106–398, § 1 (§ 641), Oct. 30, 2000, 114 Stat. 1654A–159.)

§ 405. Travel and transportation allowances: per diem while on duty outside the United States or in Hawaii or Alaska

(a) PER DIEM AUTHORIZED.—Without regard to the monetary limitation of this title, the Secretary concerned may pay a per diem to a member of the uniformed services who is on duty outside of the United States or in Hawaii or Alaska, whether or not the member is in a travel status. The Secretary may pay the per diem in advance of the accrual of the per diem.

(b) DETERMINATION OF PER DIEM.—In determining the per diem to be paid under this section, the Secretary concerned shall consider all elements of the cost of living to members of the uni-

formed services under the Secretary's jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(c) TREATMENT OF HOUSING COST AND ALLOWANCE.—Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 473; P.L. 89–718, § 57, Nov. 2, 1966, 80 Stat. 1123; P.L. 91–486, Oct. 22, 1970, 84 Stat. 1085; P.L. 96–107, § 807(a), Nov. 9, 1979, 93 Stat. 813; P.L. 98–525, § 602(e), Oct. 19, 1984, 98 Stat. 2536; P.L. 99–145, § 1303(b)(8), Nov. 8, 1985, 99 Stat. 714; P.L. 101–189, § 622, Nov. 29, 1989, 103 Stat. 1446; P.L. 103–160, § 622(a), Nov. 30, 1993, 107 Stat. 1683; P.L. 105–85, § 603(c)(2), Nov. 18, 1997, 111 Stat. 1781; P.L. 105–261, § 603(b), Oct. 16, 1998, 112 Stat. 2037; P.L. 106–398, § 1 (§ 641(b)), Oct. 30, 2000, 114 Stat. 1654A–160.)

§ 405a. Travel and transportation allowances: departure allowances

(a) Under regulations prescribed by the Secretaries concerned, when dependents of members of the uniformed services are authorized or ordered to depart by competent authority they may be authorized such allowances as the Secretary concerned determines necessary to offset the expenses incident to the departure. Allowances authorized by this section are in addition to those authorized by any other section of this title. Such allowances may be paid in advance. For the purposes of this section, a dependent "authorized or ordered to depart by competent authority" includes—

(1) a dependent who is present at or in the vicinity of the member's duty station when the departure of dependents is authorized or ordered by competent authority and who actually moves to an authorized safe haven designated by that authority, whether such safe haven is at or in the vicinity of the member's duty station or elsewhere;

(2) a dependent who resides at or in the vicinity of a former duty station of the member following the assignment of the member elsewhere or who resides at or in the vicinity of a duty station (other than the duty station of the member) incident to orders in connection with an unaccompanied tour of duty of the member, if a departure of dependents is authorized or ordered by competent authority from the duty station at which or in the vicinity of which the dependent resides and the dependent actually moves to an authorized safe haven designated by that authority;

(3) a dependent who established a household at or in the vicinity of the member's duty station but who is temporarily absent therefrom for any reason when departure of dependents is authorized or ordered by competent authority; and

(4) a dependent who was authorized to join the member and who departed from his former place of residence incident to joining the member but who, as a result of the departure of dependents, is diverted to a safe haven designated by competent authority or is authorized to travel to a place the dependent may designate, even though he was in the United States when the departure was authorized or ordered.

(b)(1) Under regulations prescribed by the Secretaries concerned, each member whose dependents are covered by subsection

(a) is entitled to have one motor vehicle that is owned by the member (or a dependent of the member) and is for the personal use of the member or his dependents transported at the expense of the United States to a designated place for the use of the dependents. When the dependents are permitted to rejoin the member, the vehicle may be transported at the expense of the United States to his permanent duty station.

(2) If a motor vehicle of a member (or a dependent of the member) that is transported at the expense of the United States under paragraph (1) 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 dependent's use. 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).

(Added P.L. 89–26, § 1(1), May 22, 1965, 79 Stat. 116; and amended P.L. 89–608, § 2, Sept. 30, 1966, 80 Stat. 851; P.L. 96–465, § 2303(e), Oct. 17, 1980, 94 Stat. 2165; P.L. 97–60, §§ 121(c), 123, Oct. 14, 1981, 95 Stat. 1002, 1003; P.L. 99–661, § 1343(b)(3), Nov. 14, 1986, 100 Stat. 3995, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 625(b)(1), Oct. 23, 1992, 106 Stat. 2424; P.L. 104–106, § 622(a), Feb. 10, 1996, 110 Stat. 363; P.L. 105–261, § 653(c), Oct. 16, 1998, 112 Stat. 2052.)

§ 406. Travel and transportation allowances: dependents; baggage and household effects

(a)(1) Except as provided in paragraph (2), a member of a uniformed service who is ordered to make a change of permanent station is entitled to transportation in kind, reimbursement therefor, or a monetary allowance in place of the cost of transportation, plus a per diem, for the member's dependents at rates prescribed by the Secretaries concerned, but not more than the rate authorized under section 404(d) of this title. The Secretary concerned may also reimburse the member for mandatory pet quarantine fees for household pets, but not to exceed $275 per change of station, when the member incurs the fees incident to such change of station.

(2)(A) Except as provided in subparagraph (B), a member who—

(i) is separated from the service or released from active duty; and

(ii) on the date of his separation from the service or release from active duty, has not served on active duty for a period of time equal to at least 90 percent of the period of time for which he initially enlisted or otherwise initially agreed to serve,

may be provided transportation under this subsection for his dependents only by transportation in kind by the least expensive mode of transportation available or by a monetary allowance that does not exceed the cost to the Government of such transportation in kind.

(B) Subparagraph (A) does not apply to a member—

(i) who is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(ii) who is separated from the service or released from active duty for a medical condition affecting the member, as determined by the Secretary concerned;

(iii) who is separated from the service or released from active duty because the period of time for which the member initially enlisted or otherwise initially agreed to serve has been reduced by the Secretary concerned and is separated or released under honorable conditions;

(iv) who is discharged under section 1173 of title 10; or

(v) who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001.

(3) The allowances authorized under this subsection may be paid in advance.

(4) In this section, the term "involuntarily separated" has the meaning given that term in section 1141 of title 10.

(b)(1)(A) Except as provided in paragraph (2), in connection with a change of temporary or permanent station, a member is entitled to transportation (including packing, crating, drayage, temporary storage, and unpacking) of baggage and household effects within the weight allowances listed in subparagraph (C), without regard to the comparative costs of the various modes of transportation. Temporary storage in excess of 180 days may be authorized. Alternatively, the member may be paid reimbursement or a monetary allowance under subparagraph (F).

(B) Subject to uniform regulations prescribed by the Secretaries concerned, in the case of a permanent change of station in which the Secretary concerned has authorized transportation of a motor vehicle under section 2634 of title 10 (except when such transportation is authorized from the old duty station to the new duty station), the member is entitled to a monetary allowance for transportation of that motor vehicle—

(i) from the old duty station to—

(I) the customary port of embarkation which is nearest the old duty station if delivery of the motor vehicle to the port of embarkation is not made in conjunction with the member's travel to the member's port of embarkation; or

(II) the customary port of embarkation which is nearest to the member's port of embarkation if delivery of the motor vehicle to the port of embarkation is made in conjunction with the member's travel to the member's port of embarkation;

whichever is most cost-effective for the Government considering all operational, travel, and transportation requirements incident to such change of station; and

(ii) from the customary port of debarkation which has been designated by the Government as most cost-effective for the Government considering all operational, travel, and transportation requirements incident to such change of station to the new duty station.

Such monetary allowance shall be established at a rate per mile that does not exceed the rate established under section 404(d)(1) of this title. If clause (i)(I) applies to the transportation by the member of a motor vehicle from the old duty station, the monetary allowance under this subparagraph shall also cover return travel to the old duty station by the member or other person transporting the vehicle. In the case of transportation described in clause (ii),

the monetary allowance shall also cover travel from the new duty station to the port of debarkation to pick up the vehicle.

(C) Under regulations prescribed by the Secretary of Defense, the weight allowance in pounds to which a member is entitled under subparagraph (A) is determined in accordance with the following table:

Pay Grade	Without Dependents	With Dependents
O–10 to O–6	18,000	18,000
O–5	16,000	17,500
O–4	14,000	17,000
O–3	13,000	14,500
O–2	12,500	13,500
O–1	10,000	12,000
W–5	16,000	17,500
W–4	14,000	17,000
W–3	13,000	14,500
W–2	12,500	13,500
W–1	10,000	12,000
E–9	12,000	14,500
E–8	11,000	13,500
E–7	10,500	12,500
E–6	8,000	11,000
E–5	7,000	9,000
E–4 [1]	7,000	8,000
E–4 [2]	3,500	7,000
E–3	2,000	5,000
E–2	1,500	5,000
E–1	1,500	5,000

[1] Member with more than two years of service computed under section 205 of this title.
[2] Member with less than two years of service computed under section 205 of this title.

(D) In connection with the change of temporary or permanent station of a member in a pay grade below pay grade O–6, the Secretary concerned may authorize a higher weight allowance than the weight allowance determined under subparagraph (C) for the member if the Secretary concerned determines that the application of the weight allowance determined under such subparagraph would result in significant hardship to the member or the dependents of the member. An increase in weight allowance under this subparagraph may not result in a weight allowance exceeding the weight allowance specified in subparagraph (C) for pay grades O–6 to O–10, unless the additional weight allowance in excess of such maximum is intended to permit the shipping of consumables that cannot be reasonably obtained at the new station of the member. The Secretary of Defense shall prescribe regulations to carry out this subparagraph.

(E) Under regulations prescribed by the Secretary of Defense, or the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy, cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy, and midshipmen at the United States Naval Academy shall be entitled, in connection with temporary or permanent station change, to transportation of baggage and household effects as provided in subparagraph (A). The weight allowance for cadets and midshipmen is 350 pounds.

(F) A member entitled to transportation of baggage and household effects under subparagraph (A) may, as an alternative to the provision of transportation, be paid reimbursement or, at the member's request, a monetary allowance in advance for the cost of transportation of the baggage and household effects. The monetary allowance may be paid only if the amount of the allowance does not exceed the cost that would be incurred by the Government under subparagraph (A) for the transportation of the baggage and household effects. Appropriations available to the Department of Defense, the Department of Transportation, and the Department of Health and Human Services for providing transportation of baggage or household effects of members of the uniformed services shall be available to pay a reimbursement or monetary allowance under this subparagraph. The Secretary concerned may prescribe the manner in which the risk of liability for damage, destruction, or loss of baggage or household effects arranged, packed, crated, or loaded by a member is allocated among the member, the United States, and any contractor when a reimbursement or monetary allowance is elected under this subparagraph.

(G) Under regulations prescribed by the Secretary of Defense, the Secretary concerned may pay a member a share (determined pursuant to such regulations) of the savings resulting to the United States when the total weights of the member's baggage and household effects shipped and stored under subparagraph (A) are less than the average weights of the baggage and household effects that are shipped and stored, respectively, by other members in the same grade and with the same dependents status as the member in connection with changes of station that are comparable to the member's change of station. The total savings shall be equal to the difference between the cost of shipping and cost of storing such average weights of baggage and household effects, respectively, and the corresponding costs associated with the weights of the member's baggage and household effects. For the administration of this subparagraph, the Secretary of Defense shall annually determine the average weights of baggage and household effects shipped and stored in connection with a change of temporary or permanent station.

(2) The transportation and allowances authorized under paragraph (1) may be paid or provided to a member upon his separation from the service or release from active duty only if the member applies for the transportation and allowances not later than 180 days after the date of his separation or release from active duty. If a member to whom this paragraph applies has been authorized nontemporary storage under subsection (d), the 180-day period shall not begin until such authorization for nontemporary storage expires. This paragraph does not apply to a member to whom subsection (g)(1) applies.

(c) The allowances and transportation authorized by subsections (a) and (b) are in addition to those authorized by sections 403(c), 404, and 405 of this title and are—

(1) subject to such conditions and limitations;

(2) for such grades, ranks, and ratings; and

(3) to and from such places;

prescribed by the Secretaries concerned. Transportation of the household effects of a member may not be made by commercial air carrier at an estimated over-all cost that is more than the estimated over-all cost of the transportation thereof by other means, unless an appropriate transportation officer has certified in writing to his commanding officer that those household effects to be so transported are necessary for use in carrying out assigned duties, or are necessary to prevent undue hardship and other means of transportation will not fill those needs. However, not more than 1,000 pounds of unaccompanied baggage may be transported by commercial air carrier, without regard to the preceding sentence, under regulations prescribed under the authority of the Secretary of Defense.

(d) The nontemporary storage of baggage and household effects may be authorized in facilities of the United States, or in commercial facilities when it is considered to be more economical to the United States. However, the weight of baggage and household effects stored, plus the weight of the baggage and household effects transported, in connection with a change of station may not be more than the maximum weight limitations in regulations prescribed by the Secretaries concerned when it is not otherwise fixed by law. In the event a member's baggage and household effects exceed such maximum weight limitation, the Secretary concerned, if requested to do so by the member, may pay the cost for the nontemporary storage of that excess weight and collect the amount paid from the member's pay and allowances, or collect the amount in such other manner as the Secretary concerned determines appropriate. The nontemporary storage of baggage and household effects may not be authorized for a period longer than one year from the date the member concerned is separated from the service, retired, placed on the temporary disability retired list, discharged, or released from active duty, except as prescribed in regulations by the Secretaries concerned for a member who, on that date, or at any time during the one-year period following that date, is confined in a hospital, or is in its vicinity, undergoing medical treatment; or in the case of a member who—

(1) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

(2) is retired with pay under any other law, or immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from active duty with separation pay or readjustment pay.

Except in the case of a member who, on the date of his separation, discharge, or release, or at any time during the one-year period following that date, is confined in a hospital, or is in its vicinity, undergoing medical treatment, the cost of the storage, for the period that exceeds one year, shall be paid by the member.

(e) When orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of his dependent, baggage, and household effects, the Secretaries concerned may authorize the movements of the dependents, baggage, and household effects and prescribe transportation in kind,

reimbursement therefor, or a monetary allowance in place thereof (as the case may be), plus a per diem, as authorized under subsection (a) or (b). This subsection may be used only under unusual or emergency circumstances, including those in which—

(1) the member is performing duty at a place designated by the Secretary concerned as being within a zone from which dependents should be evacuated;

(2) orders which direct the members' travel in connection with temporary duty do not provide for return to the permanent station or do not specify or imply any limit to the period of absence from his permanent station; or

(3) the member is serving on permanent duty at a station outside the United States, in Hawaii or Alaska, or on sea duty.

(f) Under regulations, prescribed by the Secretary concerned, transportation for dependents, baggage, and household effects of a member, plus a per diem for the member's dependents, is authorized if he dies while entitled to basic pay under chapter 3 of this title.

(g)(1) Under uniform regulations prescribed by the Secretaries concerned, a member who—

(A) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(B) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from active duty with separation pay or readjustment pay; or

(C) is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001,

is, not later than one year from the date he is so retired, placed on that list, involuntarily separated, discharged, or released, except as prescribed in regulations by the Secretaries concerned, entitled to transportation for his dependents, baggage, and household effects to the home selected under section 404(c) of this title, and to a per diem for his dependents. In addition, baggage and household effects may be shipped to a location other than the home selected by the member.

(2) If baggage and household effects of a member are shipped to a place selected by a member as his home under section 404(c) of this title that is not a place described in clause (A) or (B) of section 404(c)(2) of this title or to a location other than the home selected by the member, or if transportation is provided for a member's dependents to a place selected by the member as his home under section 404(c) of this title that is not a place described in clause (A) or (B) of section 404(c)(2) of this title, and the costs of that shipment or transportation are in excess of those that would have been incurred if the shipment had been made or the transportation had been provided to a location in the United States (other than Alaska or Hawaii), the member shall pay that excess cost.

(3) If a member authorized to select a home under section 404(c) of this title accrues that right or any entitlement under this subsection but dies before he exercises it, that right or entitlement

accrues to and may be exercised by his surviving dependents or, if there are no surviving dependents, his baggage and household effects may be shipped to the home of the person legally entitled to such baggage and effects. However, if baggage and household effects are shipped under circumstances described in paragraph (2) in which the member would have been required to pay the excess costs of that shipment, the surviving dependents or the person legally entitled to the baggage and household effects, as the case may be, shall pay that excess cost.

(h)(1) If the Secretary concerned determines that it is in the best interests of a member described in paragraph (2) or the member's dependents and the United States, the Secretary may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of the member's dependents, baggage, and household effects—

(A) authorize the movement of the member's dependents, baggage, and household effects at the station to an appropriate location in the United States or its possessions or, if the dependents are foreign nationals, to the country of the dependents' origin and prescribe transportation in kind, reimbursement therefor, or a monetary allowance in place thereof, as the case may be, plus a per diem, as authorized under subsection (a) or (b); and

(B) in the case of a member described in paragraph (2)(A), authorize the transportation of one motor vehicle, which is owned or leased by the member (or a dependent of the member) and is for the personal use of a dependent of the member, to that location by means of transportation authorized under section 2634 of title 10 or authorize the storage of the motor vehicle pursuant to subsection (b) of such section.

If the member's baggage and household effects are in nontemporary storage under subsection (d), the Secretary concerned may authorize their movement to the location concerned and prescribe transportation in kind or reimbursement therefor, as authorized under subsection (b). For the purposes of this section, a member's unmarried child for whom the member received transportation in kind to his station outside the United States or in Hawaii or Alaska, reimbursement therefor, or a monetary allowance in place thereof, and who became 21 years of age while the member was serving at that station, shall be considered as a dependent of the member.

(2) A member referred to in paragraph (1) is a member who—

(A) is serving at a station outside the United States or in Hawaii or Alaska;

(B) receives an administrative discharge under other than honorable conditions; or

(C) is sentenced by a court-martial—

(i) to be confined for a period of more than 30 days,

(ii) to receive a dishonorable or bad-conduct discharge, or

(iii) to be dismissed from a uniformed service.

(3) 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 subsection 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 dependent's use. 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).

(i) A member traveling under orders who is relieved from a duty station is entitled to transportation for his dependents, baggage, and household effects, plus a per diem for the member's dependents, regardless of the time the dependents, baggage, or household effects arrive at their destination. Appropriations of the Department of Defense available for travel or transportation that are current when the member is relieved may be used to pay for the transportation.

(j)[1] Under uniform regulations prescribed by the Secretaries concerned, a member with dependents who is ordered to make an overseas permanent change of station and who, in anticipation of his dependents accompanying him overseas, ships baggage and household effects to that overseas station, may be authorized a return shipment of the baggage and household effects if, after the shipment, the member's dependents are unable to accompany him overseas and the Secretary concerned determines that such inability was unexpected and uncontrollable.

(k) For the purposes of this section, the residence of a dependent of a member who is a student not living with the member while at school shall be considered to be the permanent duty station of the member or the designated residence of dependents of the member if the member's dependents are not authorized to reside with the member.

(l) 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 baggage and household goods being transported under this section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 473; P.L. 88–431, § 1(a), Aug. 14, 1964, 78 Stat. 439; P.L. 89–101, § 2, July 30, 1965, 79 Stat. 425; P.L. 89–680, § 1(2), (3), Oct. 15, 1966, 80 Stat. 957; P.L. 89–718, §§ 58, 59, Nov. 2, 1966, 80 Stat. 1123; P.L. 90–623, § 3(6), Oct. 22, 1968, 82 Stat. 1314, P.L. 96–107 § 841, Nov. 9, 1979, 93 Stat. 817; P.L. 96–513, § 506(7), Dec. 12, 1980, 94 Stat. 2919; P.L. 97–60, § 121(b), Oct. 14, 1981, 95 Stat. 1000; P.L. 96–86, § 404, Dec. 1, 1981, 95 Stat. 1105; P.L. 97–258, § 2(i)(1), Sept. 13, 1982, 96 Stat. 1061; P.L. 96–295, § 3(4), Oct. 12, 1982, 96 Stat. 1303; P.L. 98–94, § 909, Sept. 24, 1983, 97 Stat 638; P.L. 99–145, §§ 612(b), 614(a), 617(a), § 1303(b)(9), Nov. 8, 1985, 99 Stat. 639–641, 741; P.L. 99–433, § 602(f)(2), Oct. 1, 1986, 100 Stat. 1070; P.L. 99–661, §§ 617(a), 620(a), (b)(1), 652(a), (b), Nov. 14, 1986, 100 Stat. 3880, 3882, 3888; P.L. 100–180, § 616(b), Dec. 4, 1987, 101 Stat. 1096; P.L. 100–456, § 602(a), Sept. 29, 1988, 102 Stat. 1976; P.L. 101–189, § 623, Nov. 29, 1989, 103 Stat. 1447; P.L. 101–510, §§ 503(b), 622, 1484(i)(9), Nov. 5, 1990, 104 Stat. 1558, 1580, 1718, P.L. 102–25, § 702(b)(1), (2) and (3), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 1111(d)(4), Dec. 5, 1991, 105 Stat. 1492; P.L. 102–484, § 622(a), § 1054(a)(4), Oct. 23, 1992, 106 Stat. 2422, 2502; P.L. 103–160, § 561(l)(1), Nov. 30, 1993, 107 Stat. 1668; P.L. 104–106, §§ 623, 642(a)(1), 1502(b), 1505(d), Feb. 10, 1996, 110 Stat. 363, 368, 506, 514; P.L. 104–201, §§ 368(b), 621(a), 624, Sept. 23, 1996, 110 Stat. 2498, 2548; P.L. 105–85, § § 603(d)(1)(B), 631, Nov. 18, 1997, 111 Stat. 1782, 1795; P.L. 105–261, §§ 561(f),

[1] Subsection (d) of section 2634 of title 10 (relating to motor vehicles for members on change of permanent station) provides as follows:

(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.

631(a), (b)(1), 632, 653(b) Oct. 16, 1998, 112 Stat. 2025, 2043, 2044, 2051; P.L. 106–398, § 1 (§§ 571(f), 642(a), 643), Oct. 30, 2000, 114 Stat. 1654A–134, 161.)

§ 406a. Travel and transportation allowances: authorized for travel performed under orders that are canceled, revoked, or modified

Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances under section 404 of this title, and to transportation of his dependents, baggage, and household effects under sections 406 and 409 of this title, if otherwise qualified, for travel performed before the effective date of orders that direct him to make a change of station and that are later—

(1) canceled, revoked, or modified to direct him to return to the station from which he was being transferred; or

(2) modified to direct him to make a different change of station.

(Added P.L. 88–238, § 1(1), Dec. 23, 1963, 77 Stat. 475.)

§ 406b. Travel and transportation allowances: members of the uniformed services attached to a ship overhauling or inactivating

(a) Under regulations prescribed by the Secretary concerned, a member of the uniformed services who is on permanent duty aboard a ship which is being overhauled or inactivated away from its home port and whose dependents are residing at the home port of the ship is entitled to transportation, transportation in kind, reimbursement for personally procured transportation, or an allowance for transportation as provided in section 404(d)(3) of this title for round-trip travel from the port of overhaul or inactivation to the home port on or after the thirty-first calendar day, and every sixtieth calendar day after the thirty-first calendar day after the date on which the ship enters the overhaul or inactivation port or after the date on which the member becomes permanently attached to the ship, whichever date is later. However, in no event shall the amount of reimbursement for personally procured transportation or allowance for transportation exceed the cost of Government-procured commercial round-trip air travel.

(b) Transportation in kind, reimbursement for personally procured transportation, or a monetary allowance in place of the cost of transportation as provided in section 404(d)(1) of this title may be provided, in lieu of the member's entitlement to transportation, for the member's dependents from the location that was the home port of the ship before commencement of overhaul or inactivation to the port of overhaul or inactivation. The total reimbursement for transportation for the member's dependents may not exceed the cost of Government-procured commercial round-trip travel.

(c) In any case in which a member of the uniformed services is assigned to permanent duty aboard a ship that undergoes a change of home port to the overhaul or inactivation port, the dependents of the member may be provided transportation allowances prescribed in subsections (a) and (b) in lieu of the transportation authorized by section 406 of this title and section 2634 of title 10.

(d) Section 421 of this title does not apply with respect to transportation or allowances provided under this section.

(Added P.L. 91–210, § 1(1), Mar. 13, 1970, 84 Stat. 53, and amended P.L. 93–170, Nov. 29, 1973, 87 Stat. 689; P.L. 96–513, § 516(11), Dec. 12, 1980, 94 Stat. 2938; P.L. 97–22, § 11(b)(3)(A), July 10, 1981, 95 Stat. 138; P.L. 99–145, § 616(a), (c)(1), Nov. 8, 1985, 99 Stat. 641; P.L. 100–26, § 8(d)(7), Apr. 21, 1987, 101 Stat. 285; P.L. 100–180, § 1233(a)(3), Dec. 4, 1987, 101 Stat. 1161; P.L. 101–189, § 624(b), Nov. 29, 1989, 103 Stat. 1448; P.L. 102–484, § 1054(a)(5), Oct. 23, 1992, 106 Stat. 2502.)

§ 406c. Travel and transportation allowances: members assigned to a vessel under construction

(a) ALLOWANCE AUTHORIZED.—(1) Under regulations prescribed by the Secretary concerned, a member of the uniformed services who is assigned to permanent duty aboard a ship that is under construction at a location other than—

(A) the designated home port of the ship; or

(B) the area where the dependents of the member are residing,

is entitled to transportation, or an allowance for transportation under section 404(d)(3) of this title, for round-trip travel from the port of construction to either of those locations as provided in paragraph (2).

(2) A member referred to in paragraph (1) shall be entitled to such transportation or allowance on or after the thirty-first day (and every sixtieth day after the thirty-first day) after the later of—

(A) the date on which the ship enters the construction port; and

(B) the date on which the member becomes permanently assigned to the ship.

(3) The amount of reimbursement for personally procured transportation or the allowance for transportation under this subsection may not exceed the cost of Government-procured commercial round-trip air travel.

(b) DEPENDENTS TRAVEL.—(1) In lieu of the entitlement of a member of the uniformed services to transportation under subsection (a), the Secretary concerned may provide transportation in kind, reimbursement for personally procured transportation, or a monetary allowance in place of the cost of transportation as provided in section 404(d)(1) of this title for the travel of the dependents of the member from the designated home port of the ship, or the area where the dependents of the member are residing, to the port of construction.

(2) The total reimbursement for transportation for the member's dependents under paragraph (1) may not exceed the cost of Government-procured commercial round-trip travel.

(c) CHANGE OF HOME PORT.—In any case in which a member of the uniformed services assigned to permanent duty aboard a ship that undergoes a change of home port to the port at which the ship is being constructed, the dependents of such member may be provided the transportation allowances prescribed in subsections (a) and (b) in lieu of the transportation authorized by section 406 of this title and section 2634 of title 10.

(d) APPLICATION OF OTHER LAW.—Section 420 of this title does not apply with respect to transportation or allowances provided under this section.

(Added P.L. 101–189, § 624, Nov. 29, 1989, 103 Stat. 1447, and amended P.L. 102–190, § 622, Dec. 5, 1991, 105 Stat. 1378.)

§ 407. Travel and transportation allowances: dislocation allowance

(a) ELIGIBILITY FOR PRIMARY DISLOCATION ALLOWANCE.—(1) Under regulations prescribed by the Secretary concerned, a member of a uniformed service described in paragraph (2) is entitled to a primary dislocation allowance at the rate determined under subsection (c) for the member's pay grade and dependency status.

(2) A member of the uniformed services referred to in paragraph (1) is any of the following:

(A) A member who makes a change of permanent station and the member's dependents actually make an authorized move in connection with the change, including a move by the dependents—

(i) to join the member at the member's duty station after an unaccompanied tour of duty when the member's next tour of duty is an accompanied tour at the same station; and

(ii) to a location designated by the member after an accompanied tour of duty when the member's next tour of duty is an unaccompanied tour at the same duty station.

(B) A member whose dependents actually move pursuant to section 405a(a), 406(e), 406(h), or 554 of this title.

(C) A member whose dependents actually move from their place of residence under circumstances described in section 406a of this title.

(D) A member who is without dependents and—

(i) actually moves to a new permanent station where the member is not assigned to quarters of the United States; or

(ii) actually moves from a place of residence under circumstances described in section 406a of this title.

(E) A member who is ordered to move in connection with the closure or realignment of a military installation and, as a result, the member's dependents actually move or, in the case of a member without dependents, the member actually moves.

(3) If a primary dislocation allowance is paid under this subsection to a member described in subparagraph (C) or (D)(ii) of paragraph (2), the member is not entitled to another dislocation allowance as a member described in subparagraph (A) or (E) of such paragraph in connection with the same move.

(b) SECONDARY ALLOWANCE AUTHORIZED UNDER CERTAIN CIRCUMSTANCES.—(1) Under regulations prescribed by the Secretary concerned, whenever a member is entitled to a primary dislocation allowance under subsection (a) as a member described in paragraph (2)(C) or (2)(D)(ii) of such subsection, the member is also entitled to a secondary dislocation allowance at the rate determined under subsection (c) for the member's pay grade and dependency status if, subsequent to the member or the member's depend-

ents actually moving from their place of residence under circumstances described in section 406a of this title, the member or member's dependents complete that move to a new location and then actually move from that new location to another location also under circumstances described in section 406a of this title.

(2) If a secondary dislocation allowance is paid under this subsection, the member is not entitled to a dislocation allowance as a member described in paragraph (2)(A) or (2)(E) of subsection (a) in connection with those moves.

(c) DISLOCATION ALLOWANCE RATES.—(1) The amount of the dislocation allowance to be paid under this section to a member shall be based on the member's pay grade and dependency status at the time the member becomes entitled to the allowance, except that the Secretary concerned may not differentiate between members with dependents in pay grades E–1 through E–5.

(2) The initial rate for the dislocation allowance, for each pay grade and dependency status, shall be equal to the rate in effect for that pay grade and dependency status on December 31, 1997, as adjusted by the average percentage increase in the rates of basic pay for calendar year 1998. Effective on the same date that the monthly rates of basic pay for members are increased for a subsequent calendar year, the Secretary of Defense shall adjust the rates for the dislocation allowance for that calendar year by the percentage equal to the average percentage increase in the rates of basic pay for that calendar year.

(d) FISCAL YEAR LIMITATION; EXCEPTIONS.—(1) A member is not entitled to more than one dislocation allowance under this section during a fiscal year unless—

(A) the Secretary concerned finds that the exigencies of the service require the member to make more than one change of permanent station during the fiscal year;

(B) the member is ordered to a service school as a change of permanent station;

(C) the member's dependents are covered by section 405a(a), 406(e), 406(h), or 554 of this title; or

(D) subparagraph (C) or (D)(ii) of subsection (a)(2) or subsection (b) apply with respect to the member or the member's dependents.

(2) This subsection does not apply in time of national emergency or in time of war.

(e) FIRST OR LAST DUTY.—A member is not entitled to payment of a dislocation allowance under this section when the member is ordered from the member's home to the member's first duty station or from the member's last duty station to the member's home.

(f) RULE OF CONSTRUCTION.—For purposes of this section, a member whose dependents may not make an authorized move in connection with a change of permanent station is considered a member without dependents.

(g) ADVANCE PAYMENT.—A dislocation allowance payable under this section may be paid in advance.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 474; P.L. 89–26, § 1(3), (4), May 22, 1965, 79 Stat. 117; P.L. 89–718, § 60, Nov. 2, 1966, 80 Stat. 1123; P.L. 90–207, § 1(4), Dec. 16, 1967, 81 Stat. 651; P.L. 97–60, § 124, Oct. 14, 1981, 95 Stat. 1003; P.L. 99–145, § 611(a), Nov. 8, 1985, 99 Stat. 639; P.L. 99–661, § 619(a), Nov. 14, 1986, 100 Stat. 3881; P.L. 100–180, § 613, Dec. 4, 1987, 101 Stat. 1093, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 624, Feb. 10, 1996,

110 Stat. 363; P.L. 104–201, § 622(a), Sept. 23, 1996, 110 Stat. 2548; P.L. 106–398, § 1 (§ 644), Oct. 30, 2000, 114 Stat. 1654A–161.)

§ 408. Travel and transportation allowances: travel within limits of duty station

(a) A member of a uniformed service may be directed, by regulations of the head of the department or agency in which he is serving, to procure transportation necessary for conducting official business of the United States within the limits of his station. Expenses so incurred by the member for train, bus, streetcar, taxicab, ferry, bridge, and similar fares and tolls, or for the use of privately owned vehicles at a fixed rate a mile plus parking fees, shall be defrayed by the department or agency under which he is serving, or the member is entitled to be reimbursed for the expenses.

(b)(1) Under regulations prescribed by the Secretary concerned, a member of a uniformed service who performs emergency duty described in paragraph (2) is entitled to travel and transportation allowances under section 404 of this title for that duty.

(2) The emergency duty referred to in paragraph (1) is duty that—

(A) is performed by a member under emergency circumstances that threaten injury to property of the Federal Government or human life;

(B) is performed at a location within the limits of the member's station (other than at the residence or normal duty location of the member);

(C) is performed pursuant to the direction of competent authority; and

(D) requires the member's use of overnight accommodations.

(P.L. 87–649, Sept, 7, 1962, 76 Stat. 475; P.L. 99–145, § 619(a), Nov. 8, 1985, 99 Stat. 642; P.L. 100–26, § 8(d)(6), Apr. 21, 1987, 101 Stat. 285; P.L. 102–190, § 623, Dec. 5, 1991, 105 Stat. 1379.)

§ 409. Travel and transportation allowances: house trailers and mobile homes

(a)(1) A member, or in the case of a member's death, the member's dependent, who would otherwise be entitled to transportation of baggage and household effects under section 406 of this title, may be provided transportation of a house trailer or mobile home dwelling within the continental United States, within Alaska, or between the continental United States and Alaska (or reimbursement for such transportation), if the house trailer or mobile home dwelling is intended for use as a residence by such member or dependent. Such transportation may be limited to such modes and maximum costs as may be prescribed by regulations under subsection (d).

(2) Except as provided in subsection (c), transportation of a house trailer or mobile home dwelling under paragraph (1) is in place of the transportation of baggage and household effects the member or member's dependent would otherwise be entitled to have provided.

(3) The cost of transportation of a house trailer or mobile home dwelling under paragraph (1) may not be more than the total cost of transportation (including packing, pick-up, line-haul or drayage, delivery, and unpacking) of baggage and household effects of the

member or dependent having the maximum weight authorized for the member or dependent under regulations prescribed by the Secretary concerned.

(4) A house trailer or mobile home dwelling in transit under this section may be stored up to 180 days in accordance with regulations prescribed by the Secretary concerned.

(b) Any payment authorized by this section may be made in advance of the transportation concerned.

(c) A member or member's dependent who is entitled to the transportation of baggage and household effects from a place inside the continental United States or Alaska to a place outside the continental United States or Alaska, or from a place outside the continental United States or Alaska to a place inside the continental United States or Alaska, may be provided the transportation of a house trailer or mobile home dwelling under this section, but the total cost to the Government of the transportation of baggage and household effects and the transport of a house trailer or mobile home dwelling may not exceed the cost of transporting baggage and household effects of the member or dependent having the maximum weight authorized for the member or dependent under regulations prescribed by the Secretary concerned.

(d) The Secretaries concerned shall prescribe regulations to carry out this section.

(e) In this section, the term "continental United States" means the 48 contiguous States and the District of Columbia.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 475; P.L. 88–406, Aug. 7, 1964, 78 Stat. 383; P.L. 89–718, §§ 61, 62, Nov. 2, 1966, 80 Stat. 1123; P.L. 90–246, Jan. 2, 1968, 81 Stat. 782; P.L. 96–342, § 808(a)(1), Sept. 8, 1980, 94 Stat. 1096; P.L. 100–26, § 8(e)(6), Apr. 21, 1987, 101 Stat. 286, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117.)

§ 410. Travel and transportation allowances: miscellaneous categories

(a) The following persons are entitled to such travel and transportation allowances provided by section 404 of this title, as prescribed by the Secretaries concerned—

(1) cadets of the United States Military Academy;

(2) midshipmen of the United States Naval Academy;

(3) cadets of the United States Air Force Academy;

(4) cadets of the Coast Guard Academy;

(5) applicants for enlistment;

(6) rejected applicants for enlistment;

(7) general prisoners;

(8) discharged prisoners;

(9) insane patients transferred from military hospitals to other hospitals or to their homes; and

(10) persons discharged from Saint Elizabeths Hospital after transfer from a uniformed service.

(b) The Secretary concerned shall, in prescribing allowances under subsection (a), consider the rights of the United States, as well as those of the persons concerned.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 475; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

§ 411. Travel and transportation allowances: administrative provisions

(a) For the administration of sections 404 (a), (b), and (d)–(f), 404a, 405, 405a, 406(a)–(f), 407, 409, and 410 of this title, the Secretaries concerned shall prescribe regulations that are, as far as practicable, uniform for all of the uniformed services.

(b) In establishing the rates and kinds of allowances authorized by the sections of this title designated by subsection (a), the Secretaries concerned shall—

(1) consider the average cost of common carrier transportation, when prescribing a monetary allowance in place of transportation;

(2) consider the current economic data on the cost of subsistence, including lodging and other necessary incidental expenses related thereto, when prescribing per diem rates and designating areas as high cost areas; and

(3) consider the average cost of transportation and current economic data on the cost of subsistence, including lodging and other necessary incidental expenses relating thereto, when prescribing mileage allowances.

(c) The Secretaries concerned shall determine what constitutes a travel status for the purposes of the sections of this title designated by subsection (a).

(d) The Secretary concerned shall define the term "permanent station" for the purposes of the sections of this title designated by subsection (a). The definition shall include a shore station or the home yard or home port of a vessel to which a member of a uniformed service who is entitled to basic pay may be ordered. An authorized change in the home yard or home port of such a vessel is a change of permanent station.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 476; P.L. 89–26, § 1(5), May 22, 1965, 79 Stat. 117; P.L. 96–343, § 5(b), Sept. 8, 1980, 94 Stat. 1126; P.L. 96–513, § 516(12), Dec. 12, 1980, 94 Stat. 2938; P.L. 97–60, § 122(b), Oct. 14, 1981, 95 Stat. 1003, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

§ 411a. Travel and transportation allowances: travel performed in connection with convalescent leave

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel from his place of medical treatment in the continental United States to a place selected by him and approved by the Secretary concerned, and return, when the Secretary concerned determines that the member is traveling in connection with authorized leave for convalescence from illness or injury incurred while the member was eligible for the receipt of hostile fire pay under section 310 of this title.

(b) The allowances prescribed under this section may not be at rates more than the rates authorized under section 404(d)(1) of this title. Authorized travel under this section is performed in a duty status.

(Added P.L. 90–207, § 9(1), Dec. 16, 1967, 81 Stat. 655.)

§ 411b. Travel and transportation allowances: travel performed in connection with leave between consecutive overseas tours

(a)(1) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service stationed outside the 48 contiguous States and the District of Columbia who is ordered to a consecutive tour of duty at the same duty station or who is ordered to make a change of permanent station to another duty station outside the 48 contiguous States and the District of Columbia may be paid travel and transportation allowances in connection with authorized leave from his last duty station to a place approved by the Secretary concerned, or his designee, or to a place no farther distant than his home of record and from that place to his designated post of duty. Such allowances may be paid for the member and for the dependents of the member who are authorized to, and do, accompany him at his duty stations.

(2) Under the regulations referred to in paragraph (1), a member may defer the travel for which the member is paid travel and transportation allowances under such paragraph until not more than one year after the date on which the member begins the consecutive tour of duty at the same duty station or reports to another duty station under the order involved, as the case may be. If the member is unable to undertake the travel before the end of such one-year period as a result of duty in connection with a contingency operation, the member may defer the travel for one additional year beginning on the date the duty of the member in connection with the contingency operation ends.

(b) The allowances prescribed under this section may not exceed the rate authorized under section 404(d) of this title. Authorized travel under this section is performed in a duty status.

(Added P.L. 93–213, § 1(1), Dec. 28, 1973, 87 Stat. 910, and amended P.L. 97–60, § 125, Oct. 14, 1981, 95 Stat. 1003; P.L. 99–145, § 615(a), Nov. 8, 1985, 99 Stat. 641; P.L. 100–26, § 8(d)(8), Apr. 21, 1987, 101 Stat. 286; P.L. 100–180 § 614(d)(1), Dec. 4, 1987, 101 Stat. 1095; P.L. 102–190, § 624, Dec. 5, 1991, 105 Stat. 1379; P.L. 104–201, § 623(a), Sept. 23, 1996, 110 Stat. 2548.)

§ 411c. Travel and transportation allowances: travel performed in connection with rest and recuperative leave from certain stations in foreign countries

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service who is serving at a duty station outside the United States in an area specifically designated for the purposes of this section by the Secretary concerned may be paid for or provided transportation for himself and his dependents authorized to reside at his duty station—

(1) to another location outside the United States having different social, climatic, or environmental conditions than those at the duty station at which the member is serving; or

(2) to a location in the United States.

(b) When the transportation authorized by subsection (a) is provided by the Secretary concerned, the Secretary may use Government or commercial carriers. The Secretary concerned may limit the amount of payments made to members under subsection (a).

(Added P.L. 97–60, § 126(a), Oct. 14, 1981, 95 Stat. 1003, and amended P.L. 100–26, § 8(d)(9), Apr. 21, 1987, 101 Stat. 286; P.L. 105–261, § 633(a)(1), (b), Oct. 16, 1998, 112 Stat. 2044.)

§ 411d. Travel and transportation allowances: transportation incident to personal emergencies for certain members and dependents

(a) Under uniform regulations prescribed by the Secretaries concerned, transportation in accordance with subsection (b) may be provided for a member of a uniformed service and for dependents of that member authorized to reside at the member's duty station (or authorized to reside at another location and receive a station allowance) incident to emergency leave granted for reasons of a personal emergency (or in the case of transportation provided only for a dependent, under circumstances involving a personal emergency similar to the circumstances for which emergency leave could be granted a member).

(b)(1) In the case of a member stationed outside the continental United States and the dependents of such a member, transportation under this section may be provided from the location of the member or dependents, at the time notification of the personal emergency is received, or the member's permanent duty station (and if the member's dependents reside at another overseas location and receive a station allowance, from that location)—

(A) to the international airport in the continental United States closest to the location from which the member and his dependents departed;

(B) to any airport in the continental United States to which travel can be arranged at the same or a lower cost as travel obtained under subparagraph (A); or

(C) to an airport in Alaska, Hawaii, the Commonwealth of Puerto Rico, any possession of the United States, or any other location outside the continental United States, as determined by the Secretary concerned.

(2) In the case of a member whose domicile is outside the continental United States and who is stationed in the continental United States and the dependents of such a member, transportation under this section may be provided from the international airport in the continental United States nearest the location of the member and dependents at the time notification of the personal emergency is received or the international airport nearest the member's permanent duty station to an international airport in Alaska, Hawaii, the Commonwealth of Puerto Rico, a possession of the United States, or any other location outside the continental United States, as determined by the Secretary concerned.

(3) In the case of a member stationed outside the continental United States whose dependents reside in the continental United States, transportation under this section may be provided for the member as described in paragraph (1) and for the dependents as described in paragraph (2).

(4) Whenever transportation is provided under this section, return transportation may be provided to the location from which the member or dependent departed or the member's duty station.

(c) Transportation under this section may be authorized only upon a determination that, considering the nature of the personal emergency involved, Government transportation is not reasonably available. The cost of transportation authorized under this section

for a member, or the dependents of a member, may not exceed the cost of Government-procured commercial air travel between the applicable locations described in subsection (b).

(d) In this section, the term "continental United States" means the 48 contiguous States and the District of Columbia.

(Added P.L. 97–60, § 126(a), Oct. 14, 1981, 95 Stat. 1004, and amended P.L. 98–525, § 612(a)(1), Oct. 19, 1984, 98 Stat. 2538; P.L. 100–26, § 8(e)(6), Apr. 21, 1987, 101 Stat. 286, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 103–337, § 623, Oct. 5, 1994, 108 Stat. 2784; P.L. 106–65, § 633, Oct. 5, 1999, 113 Stat. 661.)

§ 411e. Travel and transportation allowances: transportation incident to certain emergencies for members performing temporary duty

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service who is performing temporary duty away from his permanent duty station (or who is assigned to a ship or unit operating away from its home port) may be provided the travel and transportation authorized by section 404 of this title for travel performed by the member from his place of temporary duty (or from his ship or unit) to his permanent duty station (or the home port of the ship or unit) or to any other location, and return (if applicable), if such travel has been approved incident to a personal emergency of the member.

(b) Transportation under this section may be authorized only upon a determination that Government transportation is not reasonably available, considering the nature of the personal emergency involved. The cost of transportation authorized under this section may not exceed the cost of Government-procured commercial air travel from the member's place of temporary duty (or from his ship or unit) to the member's permanent duty station (or the home port of the ship or unit), and return (if applicable).

(Added P.L. 97–60, § 126(a), Oct. 14, 1981, 95 Stat. 1004, and amended P.L. 100–456, § 623(a), Sept. 29, 1988, 102 Stat. 1984.)

§ 411f. Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies

(a) Under uniform regulations prescribed by the Secretaries concerned, round trip travel and transportation allowances may be provided the dependents of a member who dies while on active duty or inactive duty in order that such dependents may attend the burial ceremonies of the deceased member.

(b)(1) Except as provided in paragraph (2), allowances under this section are limited to travel and transportation to a location in the United States, Puerto Rico, and the possessions of the United States and may not exceed the rates for 2 days.

(2) If a deceased member was ordered or called to active duty from a place outside the United States, Puerto Rico, or the possessions of the United States, the allowances authorized under this section may be provided to and from such place and may be extended to accommodate the time necessary for such travel.

(c) In this section, the term "dependents" includes the dependents specified in paragraphs (1) and (2) of section 401(a) of this title. However, if no person qualifies under such paragraphs, the parents of a member (including stepparent or parent by adoption,

or any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before the member became 21 years of age) may be paid the travel and transportation allowances authorized under this section.

(Added P.L. 99–145, § 620(a)(1), Nov. 8, 1985, 99 Stat. 642, and amended P.L. 100–456, § 632(b), Sept. 29, 1988, 102 Stat. 1986; P.L. 103–35, § 204(a)(2), May 31, 1993, 107 Stat. 102.)

§ 411g. Travel and transportation allowances: transportation incident to voluntary extensions of overseas tours of duty

(a) Under regulations prescribed by the Secretary concerned, a member of a uniformed service who—

(1) is stationed outside the United States; and

(2) voluntarily agrees to extend his overseas tour of duty for a period equal to at least one-half of the overseas tour prescribed for his permanent duty station;

may be paid the transportation allowance described in subsection (b) for himself and each dependent who is authorized to, and does, accompany him.

(b) The transportation allowance authorized by subsection (a) is an allowance provided—

(1) in connection with authorized leave; and

(2) for the cost of tranportation—

(A) from a member's permanent duty station to a place approved by the Secretary concerned and from that place to his permanent duty station; or

(B) from a member's permanent duty station to a place no farther distant than his home of record (if he is a member without dependents) and from that place to his permanent duty station.

(c) The transportation allowance authorized by subsection (a) may not be provided to an enlisted member who, with respect to an extension of duty described in subsection (a)—

(1) elects to receive special pay under section 314 of this title for duty performed during such extension of duty; or

(2) elects to receive rest and recuperative absence or transportation at Government expense, or any combination thereof, under section 705 of title 10 for such extension of duty.

(d) The authority under this section shall expire on October 1, 1989.

(Added P.L. 100–180, § 614(a)(1), Dec. 4, 1987, 101 Stat. 1093, and amended P.L. 100–456, § 624(a), Sept. 29, 1988, 102 Stat. 1984; P.L. 101–189, § 653(c), Nov. 29, 1989, 103 Stat. 1462.)

§ 411h. Travel and transportation allowances: transportation of family members incident to the serious illness or injury of members

(a)(1) Under uniform regulations prescribed by the Secretaries concerned, transportation described in subsection (c) may be provided for not more than two family members of a member described in paragraph (2) if the attending physician or surgeon and the commander or head of the military medical facility exercising military control over the member determine that the presence of the family member may contribute to the member's health and welfare.

(2) A member referred to in paragraph (1) is a member of the uniformed services who—

(A) is serving on active duty or is entitled to pay and allowances under section 204(g) of this title (or would be so entitled were it not for offsetting earned income described in that section);

(B) is seriously ill, seriously injured, or in a situation of imminent death, whether or not electrical brain activity still exists or brain death is declared; and

(C) is hospitalized in a medical facility in or outside the United States.

(b)(1) In this section, the term "family members", with respect to a member, means—

(A) the members's spouse;

(B) children of the member (including stepchildren, adopted children, and illegitimate children);

(C) parents of the member or persons in loco parentis to the member, as provided in paragraph (2); and

(D) siblings of the member.

(2) Parents of a member or persons in loco parentis to a member include fathers and mothers through adoption and persons who stood in loco parentis to the member for a period not less than one year immediately before the member entered the uniformed service. However, only one father and one mother or their counterparts in loco parentis may be recognized in any one case.

(3) In this section, the term "health and welfare", with respect to a member, includes a situation in which a decision must be made by family members regarding the termination of artificial life support being provided to the member.

(c) The transportation authorized by subsection (a) is round-trip transportation between the home of the family member and the location of the medical facility in which the member is hospitalized.

(d)(1) The transportation authorized by subsection (a) may be provided by any of the following means:

(A) Transportation in-kind.

(B) A monetary allowance in place of transportation in-kind at a rate to be prescribed by the Secretaries concerned.

(C) Reimbursement for the commercial cost of transportation.

(2) An allowance payable under this subsection may be paid in advance.

(3) Reimbursement payable under this subsection may not exceed the cost of government-procured commercial round-trip air travel.

(Added P.L. 100–180, § 615(a)(1), Dec. 4, 1987, 101 Stat. 1095, and amended P.L. 100–456, § 632(a), Sept. 29, 1988, 102 Stat. 1985; P.L. 103–337, § 624, Oct. 5, 1994, 108 Stat. 2785.)

§ 411i. Travel and transportation allowances: parking expenses

(a) REIMBURSEMENT AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may reimburse eligible Department of Defense personnel for expenses incurred after October 1, 2001, for parking a

privately owned vehicle at a place of duty described in subsection (b).

(b) ELIGIBILITY.—A member of the Army, Navy, Air Force, or Marine Corps or an employee of the Department of Defense may be reimbursed under subsection (a) for parking expenses while—

(1) assigned to duty as a recruiter for any of the armed forces;

(2) assigned to duty at a military entrance processing facility of the armed forces; or

(3) detailed for instructional and administrative duties at any institution where a unit of the Senior Reserve Officers' Training Corps is maintained.

(Added P.L. 106–398, § 1 (§ 645(a)), Oct. 30, 2000, 114 Stat. 1654A–161.)

§ 412. Appropriations for travel: may not be used for attendance at certain meetings

Appropriations of the Department of Defense that are available for travel may not, without the approval of the Secretary concerned or his designee, be used for expenses incident to attendance of a member of an armed force under that department at a meeting of a technical, scientific, professional, or similar organization.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 476.)

§ 413. Chairman and Vice Chairman of the Joint Chiefs of Staff

The Chairman and Vice Chairman of the Joint Chiefs of Staff are entitled to the allowances provided by law for the Chief of Staff of the Army.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 476; P.L. 100–180, § 1314(c)(1), Dec. 4, 1987, 101 Stat. 1176.)

§ 414. Personal money allowance

(a) ALLOWANCE FOR OFFICERS SERVING IN CERTAIN RANKS OR POSITIONS.—In addition to other pay or allowances authorized by this title, an officer who is entitled to basic pay is entitled to a personal money allowance of—

(1) $500 a year, while serving in the grade of lieutenant general or vice admiral, or in an equivalent grade or rank;

(2) $1,200 a year, in place of any other personal money allowance authorized by this section, while serving as Surgeon General of the Public Health Service;

(3) $2,200 a year, in addition to the personal money allowance authorized by clause (1), while serving as a senior member of the Military Staff Committee of the United Nations;

(4) $2,200 a year, while serving in the grade of general or admiral or in an equivalent grade or rank; or

(5) $4,000 a year, in place of any other personal money allowance authorized by this section, while serving as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard.

(b) ALLOWANCE FOR CERTAIN NAVAL OFFICERS.—In addition to other pay or allowances authorized by law, an officer who is serving in one of the following positions is entitled to the amount set

forth for that position, to be paid annually out of naval appropriations for pay, and to be spent in his discretion for the contingencies of his position—

(1) Superintendent of the Naval Postgraduate School—$400;

(2) Commandant of Midshipmen at the Naval Academy—$800;

(3) President of the Naval War College—$1,000;

(4) Superintendent of the Naval Academy—$5,200; and

(5) Director of Naval Intelligence—$5,200.

(c) ALLOWANCE FOR SENIOR ENLISTED MEMBERS.—In addition to other pay or allowances authorized by this title, a noncommissioned officer is entitled to a personal money allowance of $2,000 a year while serving as the Sergeant Major of the Army, the Master Chief Petty Officer of the Navy, the Chief Master Sergeant of the Air Force, the Sergeant Major of the Marine Corps, or the Master Chief Petty Officer of the Coast Guard.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 476; P.L. 89–718, § 49(a)(2), Nov. 2, 1966, 80 Stat. 1121; P.L. 102–25, § 702(b)(2), April 6, 1991, 105 Stat. 117; P.L. 106–398, § 1 (§ 609), Oct. 30, 2000, 114 Stat. 1654A–149.)

§ 415. Uniform allowance: officers; initial allowance

(a) Subject to subsection (b), an officer of an armed force is entitled to an initial allowance of not more than $400 as reimbursement for the purchase of required uniforms and equipment—

(1) upon first reporting for active duty (other than for training) for a period of more than 90 days;

(2) upon completing at least 14 days of active duty as a member of a reserve component;

(3) upon completing 14 periods, each of which was of at least two hours' duration, of inactive-duty training as a member of the Ready Reserve; or

(4) upon reporting for the first period of active duty required by section 2121(c) of title 10 as a member of the Armed Forces Health Professions Scholarship program.

(b) An officer who has received an initial uniform reimbursement or allowance under any other law is not entitled to an initial allowance under subsection (a).

(c) An allowance of $250 for uniforms and equipment may be paid to each commissioned officer of the Public Health Service who is—

(1) on active duty or on inactive duty training status; and

(2) required by directive of the Surgeon General to wear a uniform.

An officer is not entitled to more than one allowance under this subsection.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 477; P.L. 88–647, Title II, § 202(3), Oct. 13, 1964, 78 Stat. 1070; P.L. 89–444, § 2(1), June 9, 1966, 80 Stat. 198; P.L. 89–718, § 63, Nov. 2, 1966, 80 Stat. 1123; P.L. 90–83, § 5(1), Sept. 11, 1967, 81 Stat. 221; P.L. 91–278, § 3(3), June 12, 1970, 84 Stat. 306; P.L. 96–76, Title III, § 313(c), Sept. 29, 1979, 93 Stat. 586; P.L. 96–513, Title IV, § 412, Dec. 12, 1980, 94 Stat. 2905; P.L. 97–22, § 10(c), July 10, 1981, 95 Stat. 137; P.L. 97–60, Title I, § 131(a), Oct. 14, 1981, 95 Stat. 1005, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 106–398, § 1 (§ 610(a)), Oct. 30, 2000, 114 Stat. 1654A–150.)

§ 416. Uniform allowance: officers; additional allowances

(a) In addition to the allowance provided by section 415 of this title, a reserve officer of an armed force, an officer of the Army or the Air Force without specification of component, or a regular officer of an armed force appointed under section 2106 or 2107 of title 10 [1] is entitled to not more than $200 as reimbursement for additional uniforms and equipment required on that duty, for each time that the officer enters on active duty for a period of more than 90 days.

(b) Subsection (a) does not apply to a tour of active duty if—

(1) the officer, during that tour or within a period of two years before entering on that tour, received, under any law, an initial uniform reimbursement or allowance of more than $200; or

(2) the officer enters on that tour within two years after completing a period of active duty of more than 90 days duration.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 477; P.L. 88–624, § 1, Oct. 3, 1964, 78 Stat. 1002; P.L. 88–647, § 202(3), Oct. 13, 1964, 78 Stat. 1070; P.L. 89–718, § 63, Nov. 2, 1966, 80 Stat. 1123, P.L. 95–513, § 516(13), Dec. 12, 1980, 94 Stat. 2938; P.L. 101–189, § 663, Nov. 29, 1989, 103 Stat. 1465; P.L. 106–398, § 1 (§ 610(b)), Oct. 30, 2000, 114 Stat. 1654A–150.)

§ 417. Uniform allowance: officers; general provisions

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department may prescribe regulations that he considers necessary to carry out sections 415(a)–(c) and 416 of this title within his department. The Secretary of Transportation, with the concurrence of the Secretary of the Navy, may prescribe regulations that he considers necessary to carry out those sections for the Coast Guard when it is not operating as a service in the Navy. As far as practicable, regulations for all reserve components shall be uniform.

(b) Under regulations approved 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, and subject to section 415(a)–(c) or 416 of this title, a reserve officer of an armed force who has received a uniform and equipment allowance under section 415(a)–(c) or 416 of this title, may, if a different uniform is required, be paid a uniform and equipment reimbursement upon transfer to, or appointment in, another reserve component.

(c) For the purposes of sections 415(a)–(c) and 416 of this title and subsections (a) and (b), an officer may count only that duty for which he is required to wear a uniform.

(d)(1) For purposes of sections 415 and 416 of this title, a period for which an officer of an armed force, while employed as a National Guard technician, is required to wear a uniform under section 709(b) of title 32 shall be treated as a period of active duty (other than for training).

(2) A uniform allowance may not be paid, and uniforms may not be furnished, to an officer under section 1593 of title 10 or section 5901 of title 5 for a period of employment referred to in para-

[1] Appointments resulting from enrollment in a Senior ROTC program.

graph (1) for which an officer is paid a uniform allowance under section 415 or 416 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 478; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 1038(b), Feb. 10, 1996, 110 Stat. 432.)

§ 418. Clothing allowance: enlisted members

(a) 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 the quantity and kind of clothing to be furnished annually to an enlisted member of the armed forces or the National Guard, and may prescribe the amount of a cash allowance to be paid to such a member if clothing is not so furnished to him.

(b) In determining the quantity and kind of clothing or allowances to be furnished pursuant to regulations prescribed under this section to persons employed as National Guard technicians under section 709 of title 32, the Secretary of Defense shall take into account the requirement under subsection (b) of such section for such persons to wear a uniform.

(c) A uniform allowance may not be paid, and uniforms may not be furnished, under section 1593 of title 10 or section 5901 of title 5 to a person referred to in subsection (b) for a period of employment referred to in that subsection for which clothing is furnished or a uniform allowance is paid under this section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 478; P.L. 104–106, § 1038(c), Feb. 10, 1996, 110 Stat. 432; P.L. 104–201, § 654, Sept. 23, 1996, 110 Stat. 2583; P.L. 106–398, § 1 (§ 611), Oct. 30, 2000, 114 Stat. 1654A–150.)

§ 419. Civilian clothing allowance

Under regulations prescribed by the Secretary of Defense, an officer of the armed force who is assigned to a permanent duty station at a location outside the United States may be paid a civilian clothing allowance in such amount as the Secretary shall determine under regulations if such officer is required to wear civilian clothing all or a substantial portion of the time in the performance of the officer's official duties. A clothing allowance under this section is in addition to any uniform allowance to which an officer is otherwise entitled under this title.

(Added P.L. 100–180, § 611(a)(1)(B), Dec. 4, 1987, 101 Stat. 1093, and amended P.L. 100–456, § 625, Sept. 29, 1988, 102 Stat. 1984; P.L. 101–189, § 653(c), Nov. 29, 1989, 103 Stat. 1462.)

§ 420. Allowances while participating in international sports

(a) Section 717 of title 10 [1] does not authorize the payment of allowances at higher rates than those provided for participation in military activities not covered by that section.

(b) Notwithstanding any other law, a member of a uniformed service is not entitled to travel and transportation allowances under sections 404–411 of this title for any period during which his expenses for travel or transportation are being paid by the agency sponsoring his participation in a competition covered by section 717 of title 10.

[1] Section 717 of title 10 authorizes participation by service members in certain international sporting events and authorizes funds to support such participation.

(c) Notwithstanding any other law, a member of a uniformed service who has no dependents is not entitled to the basic allowances for subsistence and housing authorized by sections 402 and 403 of this title for a period during which he is subsisted and quartered by the agency sponsoring his participation in a competition covered by section 717 of title 10.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 478, § 419; P.L. 89–718, § 64, Nov. 2, 1966, 80 Stat. 1123; renumbered § 420, P.L. 100–180, § 611(a)(1)(A), Dec. 4, 1987, 101 Stat. 1093; P.L. 105–85, § 603(d)(1)(C), Nov. 18, 1997, 111 Stat. 1782.)

§ 421. Allowances: no increase while dependent is entitled to basic pay

A member of a uniformed service may not be paid an increased allowance under this chapter, on account of a dependent, for any period during which that dependent is entitled to basic pay under section 204 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 479; § 420; renumbered § 421, P.L. 100–180, § 611(a)(1)(A), Dec. 4, 1987, 101 Stat. 1093.)

§ 422. Cadets and midshipmen

(a) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to the allowances provided by law for a midshipman in the Navy, and to travel and transportation allowances prescribed under section 410 of this title, while traveling under orders as a cadet or midshipman.

(b) Each midshipman of the Navy to whom a Navy ration is not furnished is entitled to the commuted value of the ration in money for each day that he is on active duty, including each day that he is on leave. The Secretary of the Navy may prescribe regulations stating the conditions under which the commuted value shall be allowed and may prescribe regulations establishing the rates at which the ration shall be commuted.

(c) A cadet or midshipman appointed under section 2107 of title 10 [1] is entitled to the same allowances as are provided for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for—

(1) initial travel to the educational institution in which matriculated;

(2) travel while under orders; and

(3) travel on discharge.

However, no allowance for travel on discharge may be paid to a discharged cadet or midshipman who continues his scholastic instruction at the same educational institution.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 479; P.L. 88–647, § 202(4), Oct. 13, 1964, 78 Stat. 1070; P.L. 89–718, § 63, Nov. 2, 1966, 80 Stat. 1123.)

§ 423. Validity of allowance payments based on purported marriages

A payment of an allowance, based on a purported marriage, that is made under this chapter, under the Career Compensation

[1] The reference in section 422(b) to section 2107 of title 10, United States Code, relates to appointments resulting from enrollment in a Senior ROTC program.

Act of 1949, or under the Pay Readjustment Act of 1942, before judicial annulment or termination of that marriage, is valid, if a court of competent jurisdiction adjudges or decrees that the marriage was entered into in good faith on the part of the spouse who is a member of a uniformed service or if, in the absence of such a judgment or decree, such a finding of good faith is made by the Secretary concerned or by a person designated by him to investigate the matter.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 479.)

§ 424. Band leaders

(a) The leader of the Army Band is entitled to the allowances of a captain in the Army.

(b) The leader of the United States Navy Band is entitled to the allowances of a lieutenant in the Navy.

(c) A member of the Marine Corps who is appointed as director or assistant director of the United States Marine Corps Band under section 6222 of title 10 is entitled, while serving thereunder, only to the allowances of an officer in the grade in which he is serving. However, his allowances may not be less than those to which he was entitled at the time of his appointment under that section.

(d) The leader of the Naval Academy Band is entitled to the allowances of the pay grade prescribed for him by the Secretary of the Navy under section 207(e) of this title. The second leader is entitled to the allowances of a warrant officer, W–1.

(e) The director of the Coast Guard Band is entitled to the allowances of an officer in the grade in which he is serving. However, his allowances may not be less than those to which he was entitled at the time of his appointment as director.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 480; P.L. 89–189, § 3, Sept. 17, 1965, 79 Stat. 820; P.L. 95–551, § 3(b)(2), Oct. 30, 1978, 92 Stat. 2069.)

§ 425. United States Navy Band; United States Marine Corps Band: allowances while on concert tour

While on concert tours approved by the President, the members of the United States Navy Band and the United States Marine Corps Band do not forfeit allowances.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 480.)

§ 427. Family separation allowance

(a) ENTITLEMENT TO ALLOWANCE.—(1) In addition to any allowance or per diem to which he otherwise may be entitled under this title a member of a uniformed service with dependents is entitled to a monthly allowance equal to $100 if—

(A) the movement of his dependents to his permanent station or a place near that station is not authorized at the expense of the United States under section 406 of this title and his dependents do not reside at or near that station;

(B) he is on duty on board a ship away from the home port of the ship for a continuous period of more than 30 days; or

(C) he is on temporary duty away from his permanent station for a continuous period of more than 30 days and his dependents do not reside at or near his temporary duty station.

(2) A member who becomes entitled to an allowance under this subsection by virtue of duty prescribed in subparagraph (B) or (C) of paragraph (1) for a continuous period of more than 30 days is entitled to the allowance effective as of the earlier of—

(A) the first day of that period; or

(B) the first day the member ceased being entitled to a previous allowance under this subsection by reason of the end of duty prescribed in such subparagraphs, if the member ceased being entitled to the previous allowance within 30 days before the first day of that period.

(b) ENTITLEMENT WHEN NO RESIDENCE OR HOUSEHOLD MAINTAINED FOR DEPENDENTS.—An allowance is payable under subsection (a) even though the member does not maintain for his primary dependents who would otherwise normally reside with him, a residence or household, subject to his management and control, which he is likely to share with them as a common household when his duty assignment permits.

(c) EFFECT OF ELECTION TO SERVE UNACCOMPANIED TOUR OF DUTY.—A member who elects to serve a tour of duty unaccompanied by his dependents at a permanent station to which the movement of his dependents is authorized at the expense of the United States under section 406 of this title is not entitled to an allowance under subsection (a)(1)(A). The Secretary concerned may waive the preceding sentence in situations in which it would be inequitable to deny the allowance to the member because of unusual family or operational circumstances.

(d) ENTITLEMENT WHILE SPOUSE ENTITLED TO BASIC PAY.—A member married to another member of the uniformed services becomes entitled, regardless of any other dependency status, to an allowance under subsection (a) by virtue of duty prescribed in subparagraph (A), (B), or (C) of paragraph (1) of such subsection if the members were residing together immediately before being separated by reasons of execution of military orders. Section 421 of this title does not apply to bar the entitlement to an allowance under this section. However, not more than one monthly allowance may be paid with respect to a married couple under this section.

(Added P.L. 88–132, § 11(1), Oct. 2, 1963, 77 Stat. 217, and amended P.L. 91–529, § 1, Dec. 7, 1970, 84 Stat. 1389; P.L. 91–533, § 1, Dec. 7, 1970, 84 Stat. 1392; P.L. 96–342, § 809(a), Sept. 8, 1980, 94 Stat. 1097; P.L. 99–145, § 607(a), Nov. 8, 1985, 99 Stat. 639; P.L. 99–661, § 618(a), Nov. 14, 1986, 100 Stat. 3880, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 611(b) and 625, Dec. 5, 1991, 105 Stat. 1376 and 1379; P.L. 103–337, § 625(a), Oct. 5, 1994, 108 Stat. 2785; P.L. 104–106, § 606, Feb. 10, 1996, 110 Stat. 358; P.L. 104–201, § 607, Sept. 23, 1996, 110 Stat. 2542; P.L. 105–85, §§ 603(c)(3), 626, Nov. 18, 1997, 111 Stat. 1781, 1795.)

§ 428. Allowance for recruiting expenses

In addition to other pay or allowances authorized by law, and under uniform regulations prescribed by the Secretaries concerned, a member who is assigned to recruiting duties for his armed force may be reimbursed for actual and necessary expenses incurred in connection with those duties.

(Added P.L. 92–129, § 205(a), Sept. 28, 1971, 85 Stat. 359.)

§ 429. Travel and transportation allowances: minor dependent schooling

Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service whose permanent station is outside the United States may be allowed transportation in kind for any minor dependent (or reimbursement thereof), or a monetary allowance in place of such transportation in kind, to a school operated by the Department of Defense under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.) for dependents in an overseas area which is operated, and which such dependent attends, on a 5-day-a-week dormitory basis or on a 7-day-a-week dormitory basis. In the case of a dependent attending a school on a 5-day-a-week dormitory basis, the transportation in kind or allowance authorized by this section shall be for weekly trips to and from such school, and in the case of a dependent attending a school on a 7-day-a-week dormitory basis, such transportation in kind or allowances shall be for not less than three trips to and from such school during the school year.

(Added P.L. 95–561, § 1407, Nov. 1, 1978, 92 Stat, 2367, and amended P.L. 99–145, § 1303(b)(10), Nov. 8, 1985, 99 Stat. 741.)

§ 430. Travel and transportation: dependent children of members stationed overseas

(a) Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service who—

(1) is assigned a permanent duty station outside the continental United States,

(2) is accompanied by his dependents at or near his duty station (unless his only dependents are in the category of dependent described in clause (3)), and

(3) has a dependent child who is under 23 years of age attending a school in the continental United States for the purpose of obtaining a formal education,

may be paid the allowance set forth in subsection (b) if he otherwise qualifies for such allowance.

(b)(1) A member described in subsection (a) may be paid a transportation allowance for each unmarried dependent child, who is under 23 years of age and is attending a school in the continental United States for the purpose of obtaining a formal education, of one annual trip between the school being attended and the member's duty station outside the continental United States and return. The allowance authorized by this section may be transportation in kind or reimbursement therefor, as prescribed by the Secretaries concerned. However, the transportation authorized by this section may not be paid a member for a child attending a school in the continental United States for the purpose of obtaining a secondary education if the child is eligible to attend a secondary school for dependents that is located at or in the vicinity of the duty station of the member and is operated under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) At the option of the member, in lieu of the transportation of baggage of a dependent child under paragraph (1) from the dependent's school in the continental United States, the Secretary

concerned may pay or reimburse the member for costs incurred to store the baggage at or in the vicinity of the school during the dependent's annual trip between the school and the member's duty station. The amount of the payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage.

(c) Whenever possible, the Military Airlift Command or Military Sealift Command shall be used, on a space-required basis, for the travel authorized by this section.

(d) For a member assigned to duty outside the continental United States, transportation under this section may be provided a dependent child as described in subsection (a)(3) who is attending a school in Alaska or Hawaii.

(e) The transportation allowance authorized by this section (whether transportation in kind or reimbursement) may not be paid in the case of a member assigned to a permanent duty station in Alaska or Hawaii for a child attending a school in the State of the permanent duty station.

(f) In this section:

(1) The term "continental United States" means the 48 contiguous States and the District of Columbia.

(2) The term "formal education" means the following:

(A) A secondary education.

(B) An undergraduate college education.

(C) A graduate education pursued on a full-time basis at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(D) Vocational education pursued on a full-time basis at a post-secondary vocational institution (as defined in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c))).

(Added P.L. 98–94, § 910(a)(1), Sept. 24, 1983, 97 Stat. 639, and amended P.L. 101–189, § 625, Nov. 29, 1989, 103 Stat. 1448; P.L. 101–510, § 1484(e), Nov. 5, 1991, 104 Stat. 1717; P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 105–261, § 634, Oct. 16, 1998, 112 Stat. 2044; P.L. 106–398, § 1 (§ 646), Oct. 30, 2000, 114 Stat. 1654A–162.)

§ 431. Benefits for certain members assigned to the Defense Intelligence Agency

(a) The Secretary of Defense may provide to members of the armed forces described in subsection (e) 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), (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), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(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) Members of the armed forces may not receive benefits under both subsection (a) and any other provision of this title for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

(d) 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.

(e) Subsection (a) applies to members of the armed forces who—

(1) are assigned—

(A) to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; or

(B) to the Defense Intelligence Agency and engaged in intelligence-related duties outside the United States; and

(2) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added P.L. 99–145, § 1302(b)(1), Nov. 8, 1985, 99 Stat. 738, and amended, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–93, § 502(b), January 6, 1996, 109 Stat. 973; P.L. 106–65, § 1067(2), Oct. 5, 1999, 113 Stat. 774.)

§ 432. Travel and transportation: members escorting certain dependents

(a) Under regulations prescribed by the Secretary concerned, a member of a uniformed service may be provided round trip transportation and travel allowances for travel performed or to be performed under competent orders as an escort for the member's dependent when travel by the dependent is authorized by competent authority and the dependent is incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances.

(b) Whenever possible, the Military Airlift Command or Military Sealift Command shall be used, on a space-required basis, for the travel authorized by this section.

(Added P.L. 99–661, § 615(a)(1), Nov. 14, 1986, 100 Stat. 3879, § 431, and renumbered § 432, P.L. 100–26, § 8(b)(1), Apr. 21, 1987, 101 Stat. 285.)

§ 433. Allowance for muster duty

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of the Ready Reserve who is not a member of the National Guard or of the Selected Reserve is entitled to an allowance for muster duty performed pursuant to section 12319 of title 10 if the member is engaged in that duty for at least two hours.

(b) The amount of the allowance under this section shall be 125 percent of the amount of the average per diem rate for the United States (other than Alaska and Hawaii) under section 404(d)(2)(A) of this title as in effect on September 30 of the year proceding the year in which the muster duty is performed.

(c) The allowance authorized by this section may not be disbursed in kind. The allowance may be paid to the member before, on, or after the date on which the muster duty is performed, but not later than 30 days after that date. The allowance shall constitute the single, flat-rate monetary allowance authorized for the performance of muster duty and shall constitute payment in full to the member, regardless of grade or rank in which serving, as commutation for travel to the immediate vicinity of the designated muster duty location, transportation, subsistence, and the special

or extraordinary costs of enforced absence from home and civilian pursuits, including such absence on weekends and holidays.

(d) A member who performs muster duty is not entitled to compensation for inactive-duty training under section 206(a) of this title for the same period.

(Added P.L. 101–189, § 502(b), Nov. 29, 1989, 103 Stat. 1436, and amended P.L. 101–510, § 1484(h)(5), Nov. 5, 1990, 104 Stat. 1718; P.L. 104–106, § 1501(d)(4)(B), Feb. 10, 1996, 110 Stat. 501; P.L. 105–85, § 627, Nov. 18, 1997, 111 Stat. 1795.)

§ 434. Subsistence reimbursement relating to escorts of foreign arms control inspection teams

(a) REIMBURSEMENT OF REASONABLE SUBSISTENCE COSTS.—Under uniform regulations prescribed by the Secretaries concerned, a member of the armed forces may be reimbursed for the reasonable cost of subsistence incurred by the member while performing duties as an escort of an arms control inspection team of a foreign country, or any member of such a team, while the team or the team member, as the case may be, is engaged in activities related to the implementation of an arms control treaty or agreement.

(b) PERIOD OF AUTHORITY.—The authority under subsection (a) applies to the period during which the inspection team, pursuant to authority specifically provided in the applicable arms control treaty or agreement, is in the country where inspections and related activities are being conducted by the team pursuant to that treaty or agreement.

(c) EFFECT OF LOCATION OF MEMBER'S PERMANENT DUTY STATION.—The authority under subsection (a) applies to a member of the armed forces whether the duties referred to in that subsection are performed at, near, or away from the member's permanent duty station.

(Added P.L. 102–484, § 623(a), Oct. 23, 1992, 106 Stat. 2423.)

§ 435. Funeral honors duty: allowance

(a) ALLOWANCE AUTHORIZED.—The Secretary concerned may authorize payment of an allowance to a member of the Ready Reserve for any day on which the member performs at least two hours of funeral honors duty pursuant to section 12503 of title 10 or section 115 of title 32.

(b) AMOUNT.—The daily rate of an allowance under this section is $50.

(Added P.L. 106–65, § 578(j), Oct. 5, 1999, 113 Stat. 630, and amended P.L. 106–398, § 1 (§ 575(b)), Oct. 30, 2000, 114 Stat. 1654A–138.)

§ 436. Per diem allowance for lengthy or numerous deployments [1]

(a) PER DIEM REQUIRED.—The Secretary of the military department concerned shall pay a high-deployment per diem allowance to a member of the armed forces under the Secretary's jurisdiction for each day on which the member (1) is deployed, and (2) has, as of that day, been deployed 401 or more days out of the preceding 730 days.

[1] Section 436 takes effect on October 1, 2001. See section 586(d)(2) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 639).

(b) DEFINITION OF DEPLOYED.—In this section, the term "deployed", with respect to a member, means that the member is deployed or in a deployment within the meaning of section 991(b) of title 10 (including any definition of "deployment" prescribed under paragraph (4) of that section).

(c) AMOUNT OF PER DIEM.—The amount of the high-deployment per diem payable to a member under this section is $100.

(d) PAYMENT OF CLAIMS.—A claim of a member for payment of the high-deployment per diem allowance that is not fully substantiated by the recordkeeping system applicable to the member under section 991(c) of title 10 shall be paid if the member furnishes the Secretary concerned with other evidence determined by the Secretary as being sufficient to substantiate the claim.

(e) RELATIONSHIP TO OTHER ALLOWANCES.—A high-deployment per diem payable to a member under this section is in addition to any other pay or allowance payable to the member under any other provision of law.

(f) NATIONAL SECURITY WAIVER.—No per diem may be paid under this section to a member for any day on which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.

(Added P.L. 106–65, § 586(b), Oct. 5, 1999, 113 Stat. 638, and amended P.L. 106–398, § 1 (§§ 574(c), 1087(c)(1)(A)(i)), Oct. 30, 2000, 114 Stat. 1654A–137, 292.)

CHAPTER 9—LEAVE

Sec.
501. Payments for unused accrued leave.
502. Absences due to sickness, wounds, and certain other causes.
503. Absence without leave or over leave.
504. Cadets and midshipmen: chapter does not apply to.

§ 501. Payments for unused accrued leave

(a) In this section, the term "discharge" means—

(1) in the case of an enlisted member, separation or release from active duty under honorable conditions, termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated), or appointment as an officer;

(2) in the case of an officer, separation or release from active duty under honorable conditions; and

(3) in the case of either an officer or an enlisted member, death while on active duty unless the decedent was put to death as lawful punishment for a crime or a military offense.

(b)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basic pay to which he was entitled on the date of discharge.

(2) Payment may not be made under this subsection to a member who is discharged for the purpose of accepting an appointment or a warrant in any uniformed service.

(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976.

(4) A member to whom a payment may not be made under this subsection, or a member who reverts from officer to enlisted status, carries the accrued leave standing to his credit from the one status to the other within any uniformed service.

(5) The limitation in the second sentence of paragraph (3) and in subsection (f) shall not apply with respect to leave accrued—

(A) by a member of a reserve component while serving on active duty in support of a contingency operation;

(B) by a member of the armed forces in the Retired Reserve while serving on active duty in support of a contingency operation; or

(C) by a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps or a member of the Fleet Reserve or Fleet Marine Corps Reserve while the member is serving on active duty in support of a contingency operation.

(c) Unused leave for which payment is made under subsection (b) is not considered as service for any purpose.

(d)(1) Payments for unused accrued leave under subsections (b) and (g), in the case of a member who dies while on active duty or in the case of a member or former member who dies after retirement or discharge and before he receives that payment, shall be made in accordance with section 2771 of title 10.[1] In the case of a member who dies while on active duty, payment for unused accrued leave under subsections (b) and (g) shall be based upon the unused accrued leave the member carried forward into the leave year during which he died plus the unused leave that accrued to him during that leave year.

(2) The limitations in the second sentence of subsection (b)(3), subsection (f), and the second sentence of subsection (g) shall not apply with respect to a payment made under this subsection.

(e)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge.

(2) The Secretary concerned may require that a member of a uniformed service who is discharged before completing six months of active duty because of a failure to serve satisfactorily (as determined by the Secretary concerned) forfeit all accrued leave to his credit at the time of his discharge.

(f) The number of days upon which payment under subsection (b) or (g) is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after February 9, 1987. For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

(g) An officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is credited with accumulated and accrued annual leave on the date of his separation, retirement, or release from active duty, shall, if his application for that leave is approved by the Secretary of Health and Human Services, be paid for that leave in a lump-sum on the basis of his basic pay, subsistence allowance, and allowance for quarters whether or not he is receiving that allowance on that date. However, the number of days upon which the lump-sum payment is based is subject to subsection (f). A lump-sum payment may not be made under this subsection to an officer—

[1] Section 2771 of title 10 specifies the order of eligibility for payments to beneficiaries of a deceased member as follows: (1) Beneficiary designated by member in writing; (2) surviving spouse; (3) children and their dependents, by representation; (4) father and mother, in equal parts; (5) legal representative; and (6) person entitled under the law of the domicile of the deceased member.

(1) whose appointment expires or is terminated and who, without a break in active service, accepts a new appointment;

(2) who is retired for age in time of war and is continued on, or recalled to, active duty without a break in active service; or

(3) who is transferred to another department or agency of the United States under circumstances in which, by any other law, his leave may be transferred.

In this subsection, the term "accumulated annual leave" means unused accrued annual leave carried forward from one leave year into the next leave year, and the term "accrued annual leave" means the annual leave accruing to an officer during one leave year.

(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 480; P.L. 89–151, §§ 1, 2, Aug. 28, 1965, 79 Stat. 586; P.L. 89–718, §§ 49(a)(1), 65, Nov. 2, 1966, 80 Stat. 1121, 1123; P.L. 92–596, § 2, Oct. 27, 1972, 86 Stat. 1318; P.L. 94–361, § 304(a)–(g), July 14, 1976, 90 Stat. 925, 926; P.L. 96–513, § 516(14), Dec. 12, 1980, 94 Stat. 2938; P.L. 98–525, § 606(a), Oct. 19, 1984, 98 Stat. 2537; P.L. 99–145, § 682, Nov. 8, 1985, 99 Stat. 665; P.L. 100–26, § 8(e)(6), (9), Apr. 21, 1987, 101 Stat. 286, 287, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 637, Dec. 5, 1991, 105 Stat. 1383; P.L. 104–106, § 641, Feb. 10, 1996, 110 Stat. 368; P.L. 106–65, § 671, Oct. 5, 1999, 113 Stat. 674.)

§ 502. Absences due to sickness, wounds, and certain other causes

(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who is absent because of sickness or wounds, or who is directed by the Secretary concerned, or his designated representative, to be absent from duty to await orders pending disability retirement proceedings for a period that is longer than the leave authorized by section 701 of title 10, is entitled to the pay and allowances to which he would be entitled if he were not so absent. A member who is absent with leave for any other reason for not longer than the leave authorized by that section is entitled to the same pay and allowances to which he would be entitled if he were not on leave, and to any additional allowances otherwise provided by law for members on leave.

(b) Except as provided in subsection (a) and section 701(h) of title 10, a member who is authorized by the Secretary concerned, or his designated representative, to be absent for a period that is longer than the leave authorized by section 701 of title 10 is not entitled to pay or allowances during the part of his absence that is more than the number of days' leave authorized by that section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 482; P.L. 89–718, § 49(a)(1), Nov. 2, 1966, 80 Stat. 1121; P.L. 96–513, § 516(15), Dec. 12, 1980, 94 Stat. 2939; P.L. 99–661, § 506(b), Nov. 14, 1986, 100 Stat. 3865, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

§ 503. Absence without leave or over leave

(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who is absent without leave or over leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable.

(b) A commissioned officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is absent without leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 482; P.L. 89–718, § 49(a)(1), Nov. 2, 1966, 80 Stat. 1121; P.L. 96–513, § 516(15), Dec. 12, 1980, 94 Stat. 2939.)

§ 504. Cadets and midshipmen: chapter does not apply to

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, the Coast Guard Academy, midshipmen at the United States Naval Academy, or cadets or midshipmen serving elsewhere in the armed forces.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 483.)

CHAPTER 10—PAYMENTS TO MISSING PERSONS

Sec.
551. Definitions.
552. Pay and allowances: continuance while in a missing status; limitations.
553. Allotments: continuance, suspension, initiation, resumption, or increase while in a missing status; limitations.
554. Travel and transportation: dependents; household and personal effects; trailers; additional movements; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable.
555. Secretarial review.
556. Secretarial determinations.
557. Settlement of accounts.
558. Income tax deferment.
559. Benefits for members held as captives.

§ 551. Definitions

In this chapter:

(1) The term "dependent", with respect to a member of a uniformed service, means—

(A) his spouse;

(B) his unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age;

(C) his dependent mother or father;

(D) a dependent designated in official records; and

(E) a person determined to be dependent by the Secretary concerned, or his designee.

(2) The term "missing status" means the status of a member of a uniformed service who is officially carried or determined to be absent in a status of—

(A) missing;

(B) missing in action;

(C) interned in a foreign country;

(D) captured, beleaguered, or besieged by a hostile force; or

(E) detained in a foreign country against his will.

(3) The term "pay and allowances" means—

(A) basic pay;

(B) special pay;

(C) incentive pay;

(D) basic allowance for housing;

(E) basic allowance for subsistence; and

(F) station per diem allowances for not more than 90 days.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 625, and amended P.L. 99–145, § 1301(g), Nov. 8, 1985, 99 Stat. 737; P.L. 100–26, § 8(e)(10), Apr. 21, 1987, 101 Stat. 287; P.L. 105–85, § 603(d)(1)(D), Nov. 18, 1997, 111 Stat. 1782.)

§ 552. Pay and allowances: continuance while in a missing status; limitations

(a) A member of a uniformed service who is on active duty or performing inactive-duty training, and who is in a missing status, is—

(1) for the period he is in the status, entitled to receive or have credited to his account the same pay and allowances, as defined in this chapter, to which he was entitled at the beginning of that period or may thereafter become entitled; and

(2) for the period, not to exceed one year, required for his hospitalization and rehabilitation after termination of that status, under regulations prescribed by the Secretaries concerned, with respect to incentive pay, considered to have satisfied the requirements of section 301 of this title so as to entitle him to a continuance of that pay.

However, a member who is performing full-time training duty or other full-time duty without pay, or inactive-duty training with or without pay, is entitled to the pay and allowances to which he would have been entitled if he had been on active duty with pay. Notwithstanding section 1523 of title 10 [1] or any other provision of law, the promotion of a member while he is in a missing status is fully effective for all purposes.

(b) The expiration of a member's term of service while he is in a missing status does not end his entitlement to pay and allowances under subsection (a). Notwithstanding the death of a member while in a missing status, entitlement to pay and allowances under subsection (a) ends on 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 this title or under chapter 76 of title 10.

(c) A member is not entitled to pay and allowances under subsection (a) for a period during which he is officially determined to be absent from his post of duty without authority, and he is indebted to the United States for payments from amounts credited to his account for that period.

(d) A member who is performing full-time training duty or inactive-duty training is entitled to the benefits of this section only when he is officially determined to be in a missing status that results from the performance of duties prescribed by competent authority.

(e) A member in a missing status who is continued in that status under section 555 of this title or under chapter 76 of title 10 is entitled to be credited with pay and allowances under subsection (a).

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 625, and amended P.L. 92–169, § 1, Nov. 24, 1971, 85 Stat. 489; P.L. 92–482, Oct. 12, 1972, 86 Stat. 796; P.L. 93–26, § 1, Apr. 27, 1973, 87 Stat. 26; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 569(c)(2), Feb. 10, 1996, 110 Stat. 351.)

[1] Section 1523 of title 10 precludes any entitlement to bonus, gratuity, pay, or allowance resulting from a posthumous commission or warrant.

§ 553. Allotments: continuance, suspension, initiation, resumption, or increase while in a missing status; limitations

(a) Notwithstanding the end of the period for which it was made, an allotment, including one for the purchase of United States savings bonds, made by a member of a uniformed service before he was in a missing status may be continued for the period he is entitled to pay and allowances under section 552 of this title.

(b) When there is no allotment in effect, or when it is insufficient for a purpose authorized by the Secretary concerned, he, or his designee, may authorize new allotments or increases in allotments that are warranted by the circumstances and payable for the period the member is entitled to pay and allowances under section 552 of this title.

(c) The total of all allotments from the pay and allowances of a member in a missing status may not be more than the amount of pay and allowances he is permitted to allot under regulations prescribed by the Secretary concerned.

(d) A premium paid by the United States on insurance issued on the life of a member which is unearned because it covers a period after his death reverts to the appropriation of the department concerned.

(e) Subject to subsections (f) and (g), the Secretary concerned, or his designee, may, when he considers it in the interest of the member, his dependents, or the United States, direct the initiation, continuance, discontinuance, increase, decrease, suspension, or resumption of payments of allotments from the pay and allowances of a member entitled to pay and allowances under section 552 of this title.

(f) When the Secretary concerned officially reports that a member in a missing status is alive, the payments of allotments authorized by subsections (a)–(d) may, subject to section 552 of this title, be made until the date on which, in a case covered by section 555 of this title, the Secretary concerned receives evidence, or, in a case covered by chapter 76 of title 10, the Secretary concerned determines pursuant to that chapter, that the member is dead or has returned to the controllable jurisdiction of the department concerned.

(g) A member in a missing status who is continued in that status under section 555 of this title or under chapter 76 of title 10 is entitled to have the payments of allotments authorized by subsections (a)–(d) continued, increased, or initiated.

(h) When the Secretary concerned considers it essential for the well-being and protection of the dependents of a member on active duty (other than a member entitled to pay and allowances under section 552 of this title), he may, with or without the consent, and subject to termination at the request, of the member—

(1) direct the payment of a new allotment from the pay of the member;

(2) increase or decrease the amount of an allotment made by the member; and

(3) continue payment of an allotment of the member which has expired.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 626, and amended P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 569(c)(3), Feb. 10, 1996, 110 Stat. 351.)

§ 554. Travel and transportation: dependents; household and personal effects; trailers; additional movements; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable

(a) In this section, "household and personal effects" and "household effects" may include, in addition to other authorized weight allowances, one privately owned motor vehicle which may be shipped at United States expense. Under regulations prescribed by the Secretaries concerned, and in place of the transportation of household and personal effects, a dependent, who would otherwise be entitled to transportation of household and personal effects under this section, may transport a house trailer or mobile dwelling within and between the areas specified in section 409 of this title for use as a residence by one of the following means—

(1) transport it and be reimbursed by the United States;

(2) deliver it to an agent of the United States for transportation by the United States or by commercial means; or

(3) have it transported by commercial means and be reimbursed by the United States.

If a trailer or dwelling is transported under clause (2) or (3), that transportation may include one privately owned motor vehicle which may be shipped at United States expense. Transportation, and incidental costs, authorized by this section shall be at United States expense without any cost limitation, and any payment authorized may be in advance of the transportation concerned.

(b) Transportation (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) may be provided for the dependents and household and personal effects of a member of a uniformed service on active duty (without regard to pay grade), who is officially reported as dead, injured, ill, or absent for a period of more than 29 days in a missing status—

(1) to the member's official residence of record;

(2) to the residence of his dependent, next of kin, or other person entitled to custody of the effects, under regulations prescribed by the Secretary concerned; or

(3) on request of the member (if injured or ill), or his dependent, next of kin, or other person described in clause (2), to another location determined in advance or later approved by the Secretary concerned, or his designee.

When he considers it necessary, the Secretary concerned may, with respect to the household and personal effects of a member who is officially reported as absent for a period of more than 29 days in a missing status, authorize the nontemporary storage of those effects for a period of one year, or longer when justified. In addition, he may authorize additional movements of, and prescribe transportation for, the dependents and household and personal effects, or the dependents and house trailer or mobile dwelling, of a member who is officially reported as absent for a period of more than one year in a missing status.

(c) When a member described in subsection (b) is in an injured or ill status, transportation of dependents and household and personal effects authorized by this section may be provided only when prolonged hospitalization or treatment is anticipated.

(d) Transportation requested by a dependent may be authorized under this section only if there is a reasonable relationship between the circumstances of the dependent and the requested destination.

(e) In place of the transportation for dependents authorized by this section, and after the travel is completed, the Secretary concerned may authorize—

(1) reimbursement for the commercial cost of the transportation; or

(2) a monetary allowance at the prescribed rate for all, or that part, of the travel for which transportation in kind is not furnished.

(f) The Secretary concerned may store the household and personal effects of a member described in subsection (b) until proper disposition can be made. The cost of the storage and transportation (including packing, crating, drayage, temporary storage, and unpacking) of household and personal effects shall be charged against appropriations currently available.

(g) The Secretary concerned may, when he determines that there is an emergency and a sale would be in the best interest of the United States, provide for the public or private sale of motor vehicles and other bulky items of household and personal effects of a member described in subsection (b). Before a sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from the sale shall, under regulations prescribed by the Secretary concerned, be sent to the owner or other persons. If there are no such persons or if they or their addresses are not known within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts.

(h) Claims for net proceeds that are covered into the Treasury under subsection (g) may be filed with the Secretary of Defense by the rightful owners, their heirs or next of kin, or their legal representatives at any time before the end of a 5-year period from the date the proceeds are covered into the Treasury. When a claim is filed, the Secretary of Defense shall allow or disallow it. A claim that is allowed shall be paid from the appropriation for refunding money erroneously received and covered. If a claim is not filed before the end of the 5-year period from the date the proceeds are covered into the Treasury, it is barred from being acted on by the courts or the Secretary of Defense.

(i) 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 dependent for expenses incurred after that date to rent a motor vehicle for the dependent's use. 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).

(j) This section does not amend or repeal—

(1) sections 2575, 2733, 4712, 6522, or 9712 of title 10;

(2) section 507 of title 14; or

(3) chapter 171 of title 28.[1]

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 627, and amended P.L. 90–83, § 5(2), Sept. 11, 1967, 81 Stat. 221; P.L. 90–236, Jan. 2, 1968, 81 Stat. 764; P.L. 90–236, Jan. 2, 1968, 81 Stat. 764; P.L. 90–623, § 3(7), Oct. 22, 1968, 82 Stat. 1315; P.L. 92–477, § 1, Oct. 9, 1972, 86 Stat. 793; P.L. 93–548, § 3, Dec. 26, 1974, 88 Stat. 1743, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–190, § 1063(a), Dec. 5, 1991, 105 Stat. 1476; P.L. 104–316, § 202(s) Oct. 19, 1996, 110 Stat. 3845; P.L. 105–261, § 653(d), Oct. 16, 1998, 112 Stat. 2052.)

§ 555. Secretarial review

(a) Except as provided in subsection (d), when a member of a uniformed service entitled to pay and allowances under section 552 of this title has been in a missing status, and the official report of his death or of the circumstances of his absence has not been received by the Secretary concerned, he shall, before the end of a 12-month period in that status, have the case fully reviewed. After that review and the end of the 12-month period in a missing status, or after a later review which shall be made when warranted by information received or other circumstances, the Secretary concerned, or his designee, may—

(1) if the member can reasonably be presumed to be living, direct a continuance of his missing status; or

(2) make a finding of death.

(b) When a finding of death is made under subsection (a), it shall include the date death is presumed to have occurred for the purpose of—

(1) ending the crediting of pay and allowances;

(2) settlement of accounts; and

(3) payment of death gratuities.

That date is—

(A) the day after the day on which the 12-month period in a missing status ends; or

(B) if the missing status has been continued under subsection (a), the day determined by the Secretary concerned, or his designee.

(c) For the sole purpose of determining status under this section, a dependent of a member on active duty is treated as if he were a member. Any determination made by the Secretary concerned, or his designee, under this section is conclusive on all other departments and agencies of the United States. This subsection does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled.

(d) This section does not apply in a case to which section 1502 of title 10 applies.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 628, and amended P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 569(c)(1), Feb. 10, 1996, 110 Stat. 351.)

---

[1] The referenced provisions relate to disposition of unclaimed property (10 U.S.C. 2575); property loss incident to noncombat activities (10 U.S.C. 2733); disposition of effects of Army and Air Force decedents (10 U.S.C. 4712, 9712); disposition of effects of naval personnel (10 U.S.C. 6522); disposition of effects of Coast Guard decedents (14 U.S.C. 507); and tort claims procedures (28 U.S.C., chapter 171).

§ 556. Secretarial determinations

(a) The Secretary concerned, or his designee, may make any determination necessary to administer this chapter and, when so made, it is conclusive as to—

(1) death or finding of death;

(2) the fact of dependency under this chapter;

(3) the fact of dependency for the purpose of paying six months' death gratuities authorized by law;

(4) the fact of dependency under any other law authorizing the payment of pay, allowances, or other emoluments to enlisted members of the armed forces, when the payments are contingent on dependency;

(5) any other status covered by this chapter;

(6) an essential date, including one on which evidence or information is received by the Secretary concerned; and

(7) whether information received concerning a member of a uniformed service is to be construed and acted on as an official report of death.

Paragraphs (1), (5), (6), and (7) only apply with respect to a case to which section 555 of this title applies.

(b) When the Secretary concerned, in a case to which section 555 of this title applies, receives information that he considers establishes conclusively the death of a member of a uniformed service, he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that a member in a missing status is dead, make a finding of death.

(c) The Secretary concerned, or his designee, may determine the entitlement of a member to pay and allowances under this chapter, including credits and charges in his account, and that determination is conclusive. An account may not be charged or debited with an amount that a member captured, beleaguered, or besieged by a hostile force may receive or be entitled to receive from, or have placed to his credit by, the hostile force as pay, allowances, or other compensation.

(d) The Secretary concerned, or his designee, may, when warranted by the circumstances, reconsider a determination made under this chapter, and change or modify it.

(e) When the account of a member has been charged or debited with an allotment paid under this chapter, the amount so charged or debited shall be recredited to the account of the member if the Secretary concerned, or his designee, determines that the payment was induced by fraud or misrepresentation to which the member was not a party.

(f) Except an allotment for an unearned insurance premium, an allotment paid from pay and allowances of a member for the period he is entitled to pay and allowances under section 552 of this title may not be collected from the allottee as an overpayment when it was caused by delay in receiving evidence of death. An

allotment payment for a period after the end of entitlement to pay and allowances under this chapter, or otherwise, which was caused by delay in receiving evidence of death, may not be collected from the allottee or charged against the pay of the deceased member.

(g) The Secretary concerned, or his designee, may waive the recovery of an erroneous payment or overpayment of an allotment to a dependent if he considers recovery is against equity and good conscience.

(h) For the sole purpose of determining pay under this section, a dependent of a member of a uniformed service on active duty is treated as if he were a member. Any determination made by the Secretary concerned, or his designee, under this section in a case to which section 555 of this title applies is conclusive on all other departments and agencies of the United States. This subsection does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 629; P.L. 104–106, § 569(c)(4), Feb. 10, 1996, 110 Stat. 351.)

§ 557. Settlement of accounts

(a) The Secretary concerned, or his designee, may settle the account of—

(1) a member of a uniformed service for whose account payments have been made under sections 552, 553, and 555 of this title; and

(2) a survivor of a casualty to a ship, station, or military installation which results in the loss or destruction of disbursing records.

That settlement is conclusive on the accounting officers of the United States in settling the accounts of disbursing officers.

(b) Payment or settlement of an account made pursuant to a report, determination, or finding of death may not be recovered or reopened because of a later report or determination which fixes a date of death. However, an account shall be reopened and settled on the basis of a date of death so fixed which is later than that used as a basis for earlier settlements.

(c) In the settlement of his accounts, a disbursing officer is entitled, if there is no fraud or criminality by him, to credit for an erroneous payment or overpayment he made in carrying out this chapter, except section 558 of this title. Unless there is fraud or criminality by him, recovery may not be made from a civilian officer or employee or a member of a uniformed service who authorizes a payment under this chapter except section 558 of this title.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 630, and amended P.L. 99–145, § 1303(b)(11), Nov. 8, 1985, 99 Stat. 741.)

§ 558. Income tax deferment

Notwithstanding any other provision of law, a Federal income tax return of, or the payment of a Federal income tax by, a member of a uniformed service who, at the time the return or payment would otherwise become due, is in a missing status, does not become due until the earlier of the following dates—

(1) the fifteenth day of the third month in which he ceased (except by reason of death or incompetency) being in a missing

status, unless before the end of that fifteenth day he is again in a missing status; or

(2) the fifteenth day of the third month after the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

That due date is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the time for filing the return or paying the tax, as in other cases, and to assess and collect the tax as provided by sections 6851, 6861, and 6871 of the Internal Revenue Code of 1986 in cases in which the assessment or collection is jeopardized and in cases of bankruptcy or receivership.

(Added P.L. 89–554, § 5(b), Sept. 6, 1966, 80 Stat. 631, and amended P.L. 96–513, § 516(16), Dec. 12, 1980, 94 Stat. 2939; P.L. 100–26, § 8(c), Apr. 21, 1987, 101 Stat. 285.)

§ 559. Benefits for members held as captives

(a) In this section:

(1) The term "captive status" means a missing status of a member of the uniformed services which, as determined by the President, arises because of a hostile action and is a result of membership in the uniformed services, but does not include a period of captivity of a member as a prisoner of war if Congress provides to such member, in an Act enacted after August 27, 1986, monetary payment in respect of such period of captivity.

(2) The term "former captive" means a person who, as a member of the uniformed services, was held in a captive status.

(b)(1) The Secretary of the Treasury shall establish a savings fund to which the Secretary concerned may allot all or any portion of the pay and allowances of any member of the uniformed services who is in a captive status to the extent that such pay and allowances are not subject to an allotment under section 553 of this title or any other provision of law.

(2) Amounts so allotted shall bear interest at a rate which, for any calendar quarter, shall be equal to the average rate paid on United States Treasury bills with three-month maturities issued during the preceding calendar quarter. Such interest shall be computed quarterly.

(3) Amounts in the savings fund credited to a member shall be considered as pay and allowances for purposes of section 553(c) of this title and shall otherwise be subject to withdrawal under procedures which the Secretary of the Treasury shall establish.

(4) Any interest accruing under this subsection on—

(A) any amount for which a member is indebted to the United States under section 552(c) of this title shall be deemed to be part of the amount due under such section; and

(B) any amount referred to in section 556(f) of this title shall be deemed to be part of such amount for purposes of such section.

(5) An allotment under this subsection may be made without regard to section 553(c) of this title.

(c)(1) Except as provided in paragraph (3), the President shall make a cash payment to any person who is a former captive. Such payment shall be made before the end of the one-year period begin-

ning on the date on which the captive status of such person terminates.

(2) Except as provided in section 802 of the Victims of Terrorism Compensation Act (5 U.S.C. 5569 note), the amount of such payment shall be determined by the President under the provisions of section 5569(d)(2) of title 5.

(3)(A) The President—

(i) may defer such payment in the case of any former captive who during such one-year period is charged with an offense described in clause (ii), until final disposition of such charge; and

(ii) may deny such payment in the case of any former captive who is convicted of a captivity-related offense—

(I) referred to in subsection (b) or (c) of section 8312 of title 5; or

(II) under chapter 47 of title 10 (the Uniform Code of Military Justice) that is punishable by dishonorable discharge, dismissal, or confinement for one year or more.

(B) For the purposes of subparagraph (A), a captivity-related offense is an offense that is—

(i) committed by a person while the person is in a captive status; and

(ii) related to the captive status of the person.

(4) A payment under this subsection is in addition to any other amount provided by law.

(5) Any amount due a person under this subsection shall, after the death of such person, be deemed to be pay and allowances for the purposes of this chapter.

(6) Any payment made under paragraph (1) that is later denied under paragraph (3)(A)(ii) is a claim of the United States Government for purposes of section 3711 of title 31.

(d) A determination by the President under subsection (a)(1) or (c) is final and is not subject to judicial review.

(Added P.L. 99–399, § 806(a)(1), Aug. 27, 1986, 100 Stat. 884, and amended P.L. 100–26, § 8(e)(11), Apr. 21, 1987, 101 Stat. 287; P.L. 101–510, § 1484, Nov. 5, 1990, 104 Stat. 1717, P.L. 102–25, § 702(b)(1), (2) and (3), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 1054(a)(6), Oct. 23, 1992, 106 Stat. 2502.)

CHAPTER 11—PAYMENTS TO MENTALLY INCOMPETENT PERSONS

Sec.
601. Applicability.
602. Payments: designation of person to receive amounts due.
603. Regulations.
604. Determination of Secretary final.

§ 601. Applicability

This chapter applies to—

(1) members of a uniformed service who are on active duty (other than for training) or who are on a retired list of that service; and

(2) members of the Fleet Reserve or Fleet Marine Corps Reserve.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 483.)

§ 602. Payments: designation of person to receive amounts due

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of a board of medical officers or physicians, is mentally incapable of managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is especially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under this jurisdiction by the head of whichever of the following is provided medical treatment for the member, or by a person designated by that head—

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Department of Health and Human Services; or
(5) Department of Veterans Affairs.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.

(e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to payments made before the paying agency of the department concerned receives notice of that appointment.

(f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than $1,000, shall provide a suitable bond to be paid for out of amounts due the incompetent member.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 483; P.L. 96–513, § 516(17), Dec. 12, 1980, 94 Stat. 2939; P.L. 101–189, § 1621(b), Nov. 29, 1989, 103 Stat. 1603.)

§ 603. Regulations

The Secretary concerned and the Secretary of Veterans Affairs shall prescribe regulations necessary to carry out this chapter.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 484; P.L. 101–189, § 1621(b), Nov. 29, 1989, 103 Stat. 1603.)

§ 604. Determination of Secretary final

The determination as to the person authorized to receive a payment under section 602 of this title is final and is not subject to review by an official of the United States or a court.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 484; P.L. 89–718, § 66, Nov. 2, 1966, 80 Stat. 1123.)

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

Sec.

701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons.
703. Allotments: members of Coast Guard.
704. Allotments: officers of Public Health Service.
706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration.
707. Allotments: members of the National Guard.

§ 701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons

(a) Under regulations prescribed by the Secretary of the military department concerned, a commissioned officer of the Army, Navy, Air Force, or Marine Corps may transfer or assign his pay account, when due and payable.

(b) A contract surgeon, or contract dental surgeon, of the Army, Navy, or Air Force, on duty in Alaska, Hawaii, the Philippine Islands, or Puerto Rico, may transfer or assign his pay account when due and payable, under the regulations prescribed under subsection (a).

(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.

(d) Under regulations prescribed by the Secretary of Defense, a member of the Army, Navy, Air Force, or Marine Corps and a contract surgeon of the Army, Navy, or Air Force may make allotments from the pay of the member or surgeon for the purpose of supporting relatives or for any other purpose that the Secretary considers proper. Such allotments may include a maximum of six allotments considered to be discretionary under such regulations. For a member or former member entitled to retired or retainer pay, a maximum of six discretionary allotments authorized during active military service may be continued into retired status, and new discretionary allotments may be authorized so long as the total number of discretionary allotments does not exceed six.

(e) If an allotment made under subsection (d) is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned from the officer who failed to make the report.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 484; P.L. 89–718, § 67, Nov. 2, 1966, 80 Stat. 1123; P.L. 99–145, § 683(a)(1), (2), Nov. 8, 1985, 99 Stat. 665, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 104–201, § 651(a), Sept. 23, 1996, 110 Stat. 2582.)

§ 703. Allotments: members of Coast Guard

Members of the Coast Guard may, under regulations prescribed by the Secretary of Transportation, make allotments from their pay and allowances.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 484; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314.)

§ 704. Allotments: officers of Public Health Service

Commissioned officers of the Public Health Service who are on active duty may, under regulations prescribed by the President, make allotments from their pay.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 485.)

§ 706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration

Under regulations prescribed by the Secretary of Commerce, commissioned officers of the National Oceanic and Atmospheric Administration may make allotments or assignments of their pay.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 485; P.L. 89–718, § 49(a)(1), Nov. 2, 1966, 80 Stat. 1121; P.L. 96–513, § 516(18)(A), (B), Dec. 12, 1980, 94 Stat. 2939.)

§ 707. Allotments: members of the National Guard

(a) The Secretary of the Army or the Secretary of the Air Force, as the case may be, may allow a member of the National Guard who is not on active duty to make allotments from his pay under sections 204 and 206 of this title for the payment of premiums under a group life insurance program sponsored by the military department of the State in which such member holds his National Guard membership or by the National Guard association of such State if the State or association concerned has agreed in writing to reimburse the United States for all costs incurred by the United States in providing for such allotments. The amount of such costs and procedures for reimbursements shall be determined by the Secretary of Defense and his determination shall be conclusive. All amounts of reimbursements for such costs received by the United States from a State or an association shall be credited to the appropriations or funds against which charges have been made for such costs.

(b) The United States is not liable for loss or damage suffered by a person as a result of an error made by an officer or employee of the United States in carrying out the allotment program under subsection (a).

(Added P.L. 93–289, § 11(a), May 24, 1974, 88 Stat. 172, and amended P.L. 96–513, § 516(19), Dec. 12, 1980, 94 Stat. 2939; P.L. 97–295, § 3(5), Oct. 12, 1982, 96 Stat. 1304; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

CHAPTER 15—PROHIBITIONS AND PENALTIES

Sec.

802. Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs.
803. Commissioned officers of Army or Air Force: forfeiture of pay when dropped from rolls.

§ 802. Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs

A member of the Army, Navy, Air Force, or Marine Corps, on active duty who is absent from his regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately follows his intemperate use of alcoholic liquor or habit-forming drugs is not entitled to pay for the period of that absence. However, a member whose pay is forfeited for more than one month is entitled to $5 for personal expenses for each full month that his pay is forfeited. Determinations of periods and causes of absence under this section shall be made as prescribed by the Secretary concerned, and are final.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 485.)

§ 803. Commissioned officers of Army or Air Force: forfeiture of pay when dropped from rolls

A commissioned officer of the Army or the Air Force who is dropped from the rolls under section 1161(b) of title 10 for absence without authority for three months forfeits all pay due or to become due.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 486.)

CHAPTER 17—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

901. Wartime pay of officer of armed force exercising command higher than his grade.
902. Pay of crews of wrecked or lost naval vessels.
903. Retired members recalled to active duty; former members.
905. Reserve officers of the Navy or Marine Corps not on the active-duty list: effective date of pay or allowances.
906. Extension of enlistment: effect on pay and allowances.
907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized.
908. Employment of reserves and retired members by foreign governments.

§ 901. Wartime pay of officer of armed force exercising command higher than his grade

In time of war, an officer of an armed force who is serving with troops operating against an enemy and who exercises, under assignment in orders issued by competent authority, a command above that pertaining to his grade, is entitled to the pay and allowances (not above that of pay grade O–7) appropriate to the command so exercised.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 486.)

§ 902. Pay of crews of wrecked or lost naval vessels

(a) When the accounts of the disbursing officer of a naval vessel are lost as a result of the destruction of the vessel, his return for the last month may, unless there is official evidence to the contrary, be used in computing later credits to and settling accounts of persons, other than officers, carried on his accounts. If the return for the last month has not been made, the pay accounts may be settled on principles of equity and justice.

(b) When a naval vessel is lost or has not been heard from for so long that her loss may be presumed, the Secretary of the Navy may fix the date of loss of the vessel for the purpose of settling the accounts of persons aboard other than officers.

(c) When the crew of a naval vessel is separated from that vessel because of her wreck, loss, or destruction, the pay and emoluments of those officers and enlisted members that the Secretary considers (because of the sentence of a court-martial or the finding of a court of inquiry, or by other satisfactory evidence) to have done their utmost to save the vessel and, after the wreck, loss, or destruction, to have behaved themselves according to the discipline of the Navy, continue and shall be paid to them until their discharge or death, whichever is earlier.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 486; P.L. 104–316, § 118 Oct. 19, 1996, 110 Stat. 3836.)

§ 903. Retired members recalled to active duty; former members

A retired member or former member of a uniformed service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve, who is serving on active duty is entitled to the pay and allowances to which he is entitled, under this title, for the grade, rank, or rating in which he is serving. In addition, while on active duty, he is entitled to the pay and allowances, while on leave of absence or while sick, of a member of a uniformed service of similar grade, rank, or rating who is entitled to basic pay.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 487.)

§ 905. Reserve officers of the Navy or Marine Corps not on the active-duty list: effective date of pay and allowances

(a) A reserve officer who is promoted under chapter 1405 of title 10 to a grade above lieutenant (junior grade) in the Naval Reserve or above first lieutenant in the Marine Corps Reserve is entitled to the pay and allowances of the grade to which promoted for duty performed from the date on which he becomes eligible for promotion to that grade.

(b) A reserve officer who is promoted under section 14308(b) of title 10 to the grade of lieutenant (junior grade) in the Naval Reserve or first lieutenant in the Marine Corps Reserve is entitled to the pay and allowances of the higher grade for duty performed from the date given him as his date of rank.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 488; P.L. 95–377, § 9, Sept. 19, 1978, 92 Stat. 721; P.L. 96–513, § 403(b) Dec. 12, 1980, 94 Stat. 2904; P.L. 103–337, § 1676(b)(3), Oct. 5, 1994, 108 Stat. 3019.)

§ 906. Extension of enlistment: effect on pay and allowances

A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, who extends his enlistment under section 509 of title 10 is entitled to the same pay and allowances as though he had reenlisted. For the purposes of determining entitlement to reenlistment bonus or to travel and transportation allowances upon discharge, all such extensions of an enlistment are considered one continuous extension.

(P.L. 87–649 Sept. 7, 1962, 76 Stat. 489; P.L. 90–235, § 2(c), Jan. 2, 1968, 81 Stat. 757.)

§ 907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized

(a) An enlisted member who accepts an appointment as an officer shall, for service as an officer, be paid the greater of—

(1) the pay and allowances to which he is entitled as an officer; or

(2) the pay and allowances to which he would be entitled if he were in the last enlisted grade he held before his appointment as an officer.

(b) A warrant officer who accepts an appointment as a commissioned officer in a pay grade above W–4 shall, for service as such a commissioned officer, be paid the greater of—

(1) the pay and allowances to which he is entitled as such a commissioned officer;

(2) the pay and allowances to which he would be entitled if he were in the last warrant officer grade he held before his appointment as such a commissioned officer; or

(3) in the case of an officer who was formerly an enlisted member, the pay and allowances to which he would be entitled if he were in the last enlisted grade he held before his appointment as an officer.

(c) For the purposes of this section—

(1) the pay and allowances of a grade formerly held by an officer include—

(A) subject to subsection (d), special and incentive pays under chapter 5 of this title; and

(B) subject to subsection (e), allowances under chapter 7 of this title; and

(2) the rates of pay and allowances of a grade which an officer formerly held are those to which the officer would have been entitled had he remained in that grade and continued to receive the increases in pay and allowances authorized for that grade, as otherwise provided in this title.

(d) In determining the amount of the pay and allowances of a grade formerly held by an officer, incentive pay for hazardous duty under section 301 of this title, special pay for diving duty under section 304 of this title, for hardship duty under section 305 of this title, and for sea duty under section 305a of this title, and proficiency pay under section 307 of this title may be considered only so long as the officer continues to perform the duty creating the entitlement to or eligibility for that pay and would otherwise be eligible to receive that pay in his former grade.

(e) The clothing allowance under section 418 of this title may not be considered in determining the amount of the pay and allowances of a grade formerly held by an officer if the officer is entitled to a uniform allowance under section 415 of this title.

(Added P.L. 91–484, § 1(1), Oct. 21, 1970, 84 Stat. 1083, and amended P.L. 96–343, § 6(a)(1), Sept. 8, 1980, 94 Stat. 1126; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 105–85, § 619(d), Nov. 18, 1997, 111 Stat. 1790; P.L. 105–261, § 617(b), Oct. 16, 1998, 112 Stat. 2041.)

§ 908. Employment of reserves and retired members by foreign governments

(a) CONGRESSIONAL CONSENT.—Subject to subsection (b), Congress consents to the following persons accepting civil employment (and compensation for that employment) for which the consent of Congress is required by the last paragraph of section 9 of article I of the Constitution, related to acceptance of emoluments, offices, or titles from a foreign government:

(1) Retired members of the uniformed services.

(2) Members of a reserve component of the armed forces.

(3) Members of the Commissioned Reserve Corps of the Public Health Service.

(b) APPROVAL REQUIRED.—A person described in subsection (a) may accept employment or compensation described in that subsection only if the Secretary concerned and the Secretary of State approve the employment.

(c) MILITARY SERVICE IN FOREIGN ARMED FORCES.—For a provision of law providing the consent of Congress to service in the

military forces of certain foreign nations, see section 1060 of title 10. [1]

(Added P.L. 97–295, § 3(6)(A), Oct. 12, 1982, 96 Stat. 1304, and amended P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 103–160, § 1433(c), Nov. 30, 1993, 107 Stat. 1834; P.L. 103–337, § 1070(d)(6), Oct. 5, 1994, 108 Stat. 2885.)

[1] Section 1060 of title 10, United States Code, deals with the military service of retired members of the uniformed services in a military force of a newly democratic nation.

CHAPTER 19—ADMINISTRATION

.

Sec.

1001. Regulations relating to pay and allowances.
1002. Additional training or duty without pay: Reserves and members of National Guard.
1003. Assimilation of pay and allowances.
1004. Computation of pay and allowances for month or part of month.
1005. Army and Air Force: prompt payments required.
1006. Advance payments.
1007. Deductions from pay.
1008. Presidential recommendations concerning adjustments and changes in pay and allowances.
1009. Adjustments of monthly basic pay.
1010. Commissioned officers: promotions; effective date for pay and allowances.
1011. Mess operations: reimbursement of expenses.
1012. Disbursement and accounting: pay of enlisted members of the National Guard.
1013. Payment of compensation for victims of terrorism.
1014. Payment date for pay and allowances.
1015. Annual report on effects of recruitment and retention initiatives.

§ 1001. Regulations relating to pay and allowances

(a) A Secretary of a military department may not prescribe a regulation under this title or any other law, relating to the pay and allowances of members of an armed force under that department, unless it has been approved under procedures prescribed by the Secretary of Defense.

(b) Regulations of the Secretary concerned relating to pay and allowances matters, similar to those covered by subsection (a), for members of the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service, shall, as far as practicable, conform to regulations approved under that subsection.

(c) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, may obtain from the Comptroller General an advisory opinion with respect to a proposed regulation especially affecting a department under the Secretary's jurisdiction.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 489; P.L. 89–718, §§ 49(a)(1), 69, Nov. 2, 1966, 80 Stat. 1121, 1123; P.L. 90–623, § 3(1), Oct. 22, 1968, 82 Stat. 1314; P.L. 96–513, § 516(22), Dec. 12, 1980, 94 Stat. 2939; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117.)

§ 1002. Additional training or duty without pay: Reserves and members of National Guard

(a) A member of the National Guard, or of a reserve component of a uniformed service, may, with his consent, be given additional training or other duty as provided by law, without pay, as may be authorized by the Secretary concerned.

(b)(1) A member who performs training or other duty without pay under subsection (a) may, in the discretion of the Secretary

concerned, be authorized the travel and transportation allowances prescribed by section 404 (a)–(d), and (f), of this title for travel performed to and from that training or duty, and, during the performance of that training or duty, be furnished with subsistence and quarters in kind or commutation thereof at a rate to be fixed by the Secretary concerned.

(2) If a military technician (dual status), as described in section 10216 of title 10, is performing active duty without pay while on leave from technician employment, as authorized by section 6323(d) of title 5, the Secretary concerned may authorize the payment of a per diem allowance to the military technician in lieu of commutation for subsistence and quarters under paragraph (1).

(c) This section does not authorize compensation for work or study performed by a member of a reserve component in connection with correspondence courses of an armed force.

(d) This section does not apply to a member who is entitled to basic pay under chapter 3 of this title.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 489; P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 106–65, § 672, Oct. 5, 1999, 113 Stat. 674.)

§ 1003. Assimilation of pay and allowances

Chapters 3 and 5 and sections 402–407, 409–411, and 414 of this title apply equally to persons who are not serving as members of a uniformed service but whose pay or allowances, or both, are assimilated under law or a regulation prescribed under law, to the pay or allowances, or both, of commissioned officers, warrant officers, or enlisted members of any grade, rank, or rating in any uniformed service.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 490.)

§ 1004. Computation of pay and allowances for month or part of month

A member of a uniformed service who is entitled to pay and allowances under this title for a continuous period of less than one month is entitled to his pay and allowances for each day of that period at the rate of 1/30 of the monthly amount of his pay and allowances. The thirty-first day of a calendar month may not be excluded from a computation under this section.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 490.)

§ 1005. Army and Air Force: prompt payments required

Members of the Army and of the Air Force shall be paid at such times that arrears will at no time be more than two months, unless circumstances make further arrears unavoidable.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 490.)

§ 1006. Advance payments

(a) Under regulations prescribed by the Secretary concerned, a member of a uniformed service may be paid in advance—

(1) not more than three months' pay of such member upon such member's change of permanent station; or

(2) the amount of an allotment made from such member's pay to a dependent if such member is assigned or scheduled for assignment to sea duty or other duty with a unit or command

deployed or to be deployed outside the United States and the allotment is made by such member not more than sixty days before the scheduled date of the assignment of such member to such duty.

(b) Under regulations prescribed by the Secretary concerned, a member of a uniformed service who is on duty at a distant station where the pay and emoluments to which he is entitled cannot be disbursed regularly, may be paid in advance.

(c) Under regulations prescribed by the Secretary concerned, an advance of pay to a member of a uniformed service who is on duty outside the United States, or other place designated by the Secretary of Defense, of not more than two months' basic pay may be made to a member if the member or the dependents of the member are ordered evacuated by competent authority. An advance of pay under this subsection is not subject to the conditions under which advances of pay may be made under subsection (a) or (b). An advance may be made on the basis of the evacuation of a member's dependents only if all dependents of members of the uniformed services are ordered evacuated from the place where the member's dependents are located. In the case of a member with dependents, the payment may be made directly to dependents previously designated by the member. The Secretary concerned or his designee may waive any right of recovery of not more than one month's basic pay advanced under this subsection if he finds that recovery of the advance would be against equity and good conscience or against the public interest.

(d) If a person to whom an advance of pay is made under subsection (a), (b), or (c) dies or is separated from his uniformed service before liquidation of that advance, the amount remaining unliquidated at the time of his death or separation shall be credited to the account of the disbursing office concerned. However, the unliquidated amount remains a debt of that person or his estate to the United States.

(e)(1) As far as practicable, regulations for the administration of subsections (a)–(d) shall be uniform for all of the uniformed services.

(2)(A) Notwithstanding any other provision of law, an obligation for an advance of pay made pursuant to this section shall be recorded as an obligation only in the fiscal year in which the entitlement of the member to the pay accrues.

(B) Current appropriations available for advance payments under this section may be transferred to the prior fiscal year appropriation available for the same purpose in the amount of any unliquidated advance payments that remain at the end of such prior fiscal year. Such unliquidated advance payments shall then be credited to the current appropriation.

(f) Under regulations prescribed by the Secretary of Transportation, an advance of pay of not more than three months' pay may be made to an officer of the Coast Guard who is ordered to sea duty or to or from shore duty beyond the seas. In addition, the Commandant of the Coast Guard may direct such advances as he considers necessary and proper to members of the Coast Guard stationed at distant stations where the pay and emoluments to which they are entitled cannot be paid regularly.

(g) Under regulations prescribed by the Secretary concerned, the dislocation allowance authorized by section 407 of this title for a member of a uniformed service whose dependents are covered by section 405a(a) of this title may be paid in advance of the evacuation of the dependents and to the dependents designated by the member.

(h) Notwithstanding subsections (a) and (b) of section 3324 of title 31, the Secretary concerned may, when the last day of the pay period falls on a Saturday, Sunday, or legal holiday, authorize the payment of pay and allowances, to members of a uniformed service under his jurisdiction on the preceding workday but not more than three days before the last day of that pay period. If a member dies after he has received an advance payment under this subsection, but before the last day of the pay period for which the payment is made, no part of the amount so advanced is recoverable by the United States.

(i) Under regulations prescribed by the Secretary concerned, not more than one month's pay may be paid in advance to a member of the Armed Forces Health Professions Scholarship program upon reporting for a period of active duty required by section 2121(c) of title 10.

(j) Under regulations prescribed by the Secretary concerned, not more than one month's pay may be paid in advance to a member of the Senior Reserve Officers' Training Corps who is ordered to field training or a practice required under section 2109 of title 10.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 490; P.L. 89–26, § 1(6), May 22, 1965, 79 Stat. 117; P.L. 89–193, Sept. 21, 1965, 79 Stat. 823; P.L. 89–718, § 70, Nov. 2, 1966, 80 Stat. 1123; P.L. 90–623, § 3(1), (9), Oct. 22, 1968, 82 Stat. 1314, 1315; P.L. 96–76, § 313(b), Sept. 29, 1979, 93 Stat. 586; P.L. 96–215, § 3, Mar. 25, 1980, 94 Stat. 123; P.L. 96–343, § 8, Sept. 8, 1980, 94 Stat. 1128; P.L. 96–513, § 516(23), Dec. 12, 1980, 94 Stat. 2939; P.L. 97–60, § 131(b), Oct. 14, 1981, 95 Stat. 1005; P.L. 97–258, § 3(j), Sept. 13, 1982, 96 Stat. 1065; P.L. 99–145, § 1303(b)(12), Nov. 8, 1985, 99 Stat. 741; P.L. 99–661, § 602(a), Nov. 14, 1986, 100 Stat. 3874, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 602(a), Oct. 23, 1992, 106 Stat. 2420; P.L. 103–160, § 605(a), Nov. 30, 1993, 107 Stat. 1679; P.L. 105–261, § 652, Oct. 16, 1998, 112 Stat. 2051.)

§ 1007. Deductions from pay

(a) The pay of an officer of an armed force may be withheld, under section 5512 of title 5, only for an indebtedness to the United States admitted by the officer or shown by the judgment of a court, or upon a special order issued in the discretion of the Secretary of Defense (or the Secretary of Transportation, in the case of a disbursing official of the Coast Guard when the Coast Guard is not operating as a service in the Navy), or upon the denial of relief of an officer pursuant to section 3527 of title 31.

(b) An amount due the United States from an enlisted member of the Army or the Air Force for articles sold to him on credit under section 4621(a)(1) or 9621(a)(1) of title 10, as the case may be, shall be deducted from the next pay due him after the sale is reported.

(c) Under regulations prescribed by the Secretary concerned, an amount that a member of the uniformed services is administratively determined to owe the United States or any of its instrumentalities may be deducted from his pay in monthly installments. However, after the deduction of pay forfeited by the sentence of a court-martial, if any, or otherwise authorized by law to be withheld, the deductions authorized by this section may not reduce the

pay actually received for any month to less than one-third of his pay for that month.

(d) Subject to subsection (c), an amount due the United States from an enlisted member of the Army or the Air Force may be deducted from his pay on final statement, or from his savings on his clothing allowance.

(e) The amount of any damage, or cost of repairs, to arms or equipment caused by the abuse or negligence of a member of the Army or the Air Force, as the case may be, who had the care of, or was using, the property when it was damaged, shall be deducted from his pay.

(f) If, upon final settlement of the accounts of an officer of the Army or the Air Force charged with the issue of an article of military supply, there is a deficiency of that article, or if an article of military supply with whose issue an officer is charged is damaged, the value of the lost article or the amount of the damage shall be charged against the officer and deducted from his monthly pay, unless he shows to the satisfaction of the Secretary of the Army or the Secretary of the Air Force, as the case may be, by one or more affidavits setting forth the circumstances, that he was not at fault.

(g) An amount due the United States from an officer of the Army or the Air Force for rations bought on credit, and for articles bought on credit under section 4621(a)(1) or 9621(a)(1) of title 10, shall be deducted from the next pay due that officer after the sale is reported.

(h)(1) Upon request by a service relief society and subject to paragraph (2), an amount owed by a member of the uniformed services to the relief society may be deducted from the pay on final statement of such member and paid to that relief society.

(2) An amount may not be deducted under paragraph (1) from the pay of a member unless the Secretary concerned makes a determination of the amount owed in accordance with the regulations prescribed under subsection (c). Any amount determined to be owed to a service relief society under this paragraph shall be considered an amount that the member is administratively determined to owe the United States under subsection (c) and shall be collectible in accordance with such subsection.

(3) The Secretaries concerned shall prescribe regulations to carry out this subsection.

(4) In this subsection, the term "service relief society" means the Army Emergency Relief, the Air Force Aid Society, the Navy Relief Society, or the Coast Guard Mutual Assistance.

(i)(1) There shall be deducted each month from the pay of each enlisted member, warrant officer, and limited duty officer of the armed forces on active duty an amount (determined under paragraph (3)) not to exceed $1.00.

(2) Amounts deducted under paragraph (1) shall be deposited in the Armed Forces Retirement Home Trust Fund.

(3) The Secretary of Defense, after consultation with the Armed Forces Retirement Home Board, shall determine from time to time the amount to be deducted under paragraph (1) from the pay of enlisted members, warrant officers, and limited duty officers on the basis of the financial needs of the Armed Forces Retirement

Home. The amount to be deducted may be fixed at different amounts on the basis of grade or length of service, or both.

(4) In this subsection, the term "armed forces" does not include the Coast Guard when it is not operating as a service in the Navy.

(5) This subsection does not apply to an enlisted member, warrant officer, or limited duty officer of a reserve component.

(P.L. 87–649, Sept. 7, 1962, 76 Stat. 491; P.L. 89–718, §§ 71, 72, Nov. 2, 1966, 80 Stat. 1124; P.L. 90–83, § 5(3), Sept. 11, 1967, 81 Stat. 221; P.L. 98–525, § 1305, Oct. 19, 1984, 98 Stat. 2613; P.L. 99–145, § 684, Nov. 8, 1985, 99 Stat. 666; P.L. 100–180, § 633(a), Dec. 4, 1987, 101 Stat. 1105; P.L. 101–189 § 343, Nov. 29, 1989, 103 Stat. 1420; P.L. 101–510, § 1533(b), Nov. 5, 1990, 104 Stat. 1735, P.L. 102–25, § 702(b)(1), April 6, 1991, 105 Stat. 117; P.L. 102–484, § 1054(a)(7), Oct. 23, 1992, 106 Stat. 2502; P.L. 103–337, § 371(a), Oct. 5, 1994, 108 Stat. 2735; P.L. 104–106, § 913(c)(2), Feb. 10, 1996, 110 Stat. 411; P.L. 104–201, § 1009(c)(1), Sept. 23, 1996, 110 Stat. 2635; P.L. 106–65, § 1066(d)(5), Oct. 5, 1999, 113 Stat. 773.)

§ 1008. Presidential recommendations concerning adjustments and changes in pay and allowances

(a) The President shall direct an annual review of the adequacy of the pays and allowances authorized by this title for members of the uniformed services.

(b) Whenever the President considers it appropriate, but in no event later than January 1, 1967, and not less than once each four years thereafter, he shall direct a complete review of the principles and concepts of the compensation systems for members of the uniformed services. Upon completion of such review he shall submit a detailed report to Congress summarizing the results of such review together with any recommendations he may have proposing changes in the statutory salary system and other elements of the compensation structure provided members of the uniformed services.

(Added P.L. 89–132, § 2(a), Aug. 21, 1965, 79 Stat. 546; P.L. 104–106, § 642(b), Feb. 10, 1996, 110 Stat. 368.)

§ 1009. Adjustments of monthly basic pay [1]

(a) ADJUSTMENT REQUIRED.—Whenever the General Schedule of compensation for Federal classified employees, as contained in section 5332 of title 5, is adjusted upward as provided in section 5303 of such title, the President shall immediately make an upward adjustment in the monthly basic pay authorized members of the uniformed services by section 203(a) of this title.

(b) EFFECTIVENESS OF ADJUSTMENT.—An adjustment under this section shall—

(1) have the force and effect of law; and

(2) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees.

(c) EQUAL PERCENTAGE INCREASE FOR ALL MEMBERS.—(1) Subject to subsection (d), an adjustment under this section shall provide all eligible members with an increase in the monthly basic pay

[1] Subsections (a) and (b) of section 601 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–137) provide as follows:

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2001 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2001, the rates of monthly basic pay for members of the uniformed services are increased by 3.7 percent.

which is of the same percentage as the overall average percentage increase in the General Schedule rates of both basic pay and locality pay for civilian employees.

(2) Notwithstanding paragraph (1), but subject to subsection (d), an adjustment taking effect under this section during each of fiscal years 2001 through 2006 shall provide all eligible members with an increase in the monthly basic pay by the percentage equal to the sum of—

(A) one percent; plus

(B) the percentage calculated as provided under section 5303(a) of title 5 for that fiscal year, without regard to whether rates of pay under the statutory pay systems are actually increased during that fiscal year under that section by the percentage so calculated.

(d) ALLOCATION OF INCREASE AMONG PAY GRADES AND YEARS-OF-SERVICE.—(1) Subject to paragraph (2), whenever the President determines such action to be in the best interest of the Government, he may allocate the overall percentage increase in the monthly basic pay under subsection (a) among such pay grade and years-of-service categories as he considers appropriate.

(2) In making any allocation of an overall percentage increase in basic pay under paragraph (1)—

(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection may not be less than 75 percent of the amount of the increase in the monthly basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (c); and

(B) the percentage increase in the monthly basic pay in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

(e) NOTICE OF ALLOCATIONS.—Whenever the President plans to exercise the authority of the President under subsection (d) with respect to any anticipated increase in the monthly basic pay of members of the uniformed services, the President shall advise Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

(f) PROTECTION OF MEMBER'S TOTAL COMPENSATION WHILE PERFORMING CERTAIN DUTY.—(1) The total daily equivalent amount of the elements of compensation described in paragraph (3), together with other pay and allowances under this title, to be paid to a member of the uniformed services who is temporarily assigned to duty away from the member's permanent duty station or to duty under field conditions at the member's permanent duty station shall not be less, for any day during the assignment period, than the total amount, for the day immediately preceding the date of the assignment, of the elements of compensation and other pay and allowances of the member.

(2) Paragraph (1) shall not apply with respect to an element of compensation or other pay or allowance of a member during an assignment described in such paragraph to the extent that the ele-

ment of compensation or other pay or allowance is reduced or terminated due to circumstances unrelated to the assignment.

(3) The elements of compensation referred to in this subsection mean—

(A) the monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(B) the basic allowance for subsistence authorized members of the uniformed services by section 402 of this title; and

(C) the basic allowance for housing authorized members of the uniformed services by section 403 of this title.

(g) QUADRENNIAL ASSESSMENT OF ALLOCATIONS.—The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title.

(Added P.L. 93–419, § 4, Sept. 19, 1974, 88 Stat. 1152, and amended P.L. 94–361, § 303, July 14, 1976, 90 Stat. 925; P.L. 96–342, § 803, Sept. 8, 1980, 94 Stat. 1091; P.L. 96–513, § 516(24), Dec. 12, 1980, 94 Stat. 2939, P.L. 102–25, § 702(b)(1) and (2), April 6, 1991, 105 Stat. 117; P.L. 104–106, § 642(c), Feb. 10, 1996, 110 Stat. 368; P.L. 105–85, §§ 604(a)(1), 605, Nov. 18, 1997, 111 Stat. 1783, 1784; P.L. 106–65, § 602, Oct. 5, 1999, 113 Stat. 649.)

§ 1010. Commissioned officers: promotion; effective date for pay and allowances

An officer of a uniformed service who is promoted to a grade above second lieutenant or ensign is entitled to the pay and allowances of the grade to which promoted on the effective date of the promotion.

(Added P.L. 96–513, § 403(c), Dec. 12, 1980, 94 Stat. 2905.)

§ 1011. Mess operation: reimbursement of expenses

(a) The Secretary of Defense shall, by regulation, establish rates for meals sold at messes to officers, civilians, and enlisted members. Such rates shall be established at a level sufficient to provide reimbursement of operating expenses and food costs to the appropriations concerned, but members of the uniformed services and civilians in a travel status receiving a per diem allowance in lieu of subsistence shall be charged at a rate of not less than $2.50 per day. Notwithstanding the preceding sentence, if the Secretary determines that it is in the best interest of the United States, the Secretary may reduce a rate for meals established under this subsection by the amount of that rate attributable to operating expenses.

(b) For the purposes of this section, payment for meals at the rates established under this section may be made in cash or, in the case of enlisted members or civilian employees, by deduction from pay. Members of organized nonprofit youth groups sponsored at either the national or local level, when extended the privilege of visiting a military installation or when residing at a military installation pursuant to an agreement in effect on June 30, 1986, and permitted to eat in the general mess by the commanding officer of the installation, shall pay the commuted ration cost of such meal or meals.

(c) Spouses and dependent children of enlisted members in pay grades E–1, E–2, E–3, and E–4 may not be charged for meals sold at messes in excess of a level sufficient to cover food costs.

(d) When the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation shall establish rates for meals sold at Coast Guard dining facilities, provide for reimbursement of operating expenses and food costs to the appropriations concerned, and reduce the rates for such meals when the Secretary determines that it is in the best interest of the United States to do so.

(Added P.L. 96–513, § 413, Dec. 12, 1980, 94 Stat. 2906, and amended P.L. 99–145, § 810(a), Nov. 8, 1985, 99 Stat. 681; P.L. 99–661, § 655, Nov. 14, 1986, 100 Stat. 3891; P.L. 101–189, § 321, Nov. 29, 1989, 103 Stat. 1413; P.L. 104–324, § 214(a), Oct. 19, 1996, 110 Stat. 3915.)

§ 1012. Disbursement and accounting: pay of enlisted members of the National Guard

Amounts appropriated for the pay, under subsections (a), (b), and (d) of section 206, section 301(f), section 402(e), and section 1002 of this title, of enlisted members of the Army National Guard of the United States or the Air National Guard of the United States for attending regular periods of duty and instruction shall be disbursed and accounted for by the Secretary of Defense. All such disbursements shall be made for 3-month periods for units of the Army National Guard or Air National Guard under regulations prescribed by the Secretary of Defense, and on pay rolls prepared and authenticated as prescribed in those regulations.

(Added P.L. 97–258, § 2(i)(2)(B), Sept. 13, 1982, 96 Stat. 1061, and amended P.L. 99–145, § 1303(b)(13) (A), (B), Nov. 8, 1985, 99 Stat. 741; P.L. 104–106, §§ 602(c)(2), 913(c)(1), Feb. 10, 1996, 110 Stat. 357, 411; P.L. 106–398, § 1 (§ 1087(b)(5)), Oct. 30, 2000, 114 Stat. 1654A–292.)

§ 1013. Payment of compensation for victims of terrorism

Any benefit or payment pursuant to section 559 of this title, or section 1032 or 1095a or chapter 110 of title 10, shall be paid out of funds available to the Secretary concerned for military personnel.

(Added P.L. 99–399, § 806(e)(1), Aug. 27, 1986, 100 Stat. 888, and amended P.L. 100–456, § 1233(g)(4), Sept. 29, 1988, 102 Stat. 2050; P.L. 101–510, § 1484(h)(6), Nov. 5, 1990, 104 Stat. 1718.)

§ 1014. Payment date for pay and allowances

(a) Amounts of basic pay, basic allowance for housing, basic allowance for subsistence, and other payments of military compensation (other than travel and transportation allowances and separation allowances) shall be paid on the first day of the month beginning after the month during which the right to such compensation accrues.

(b) Subsection (a) does not preclude one payment in midmonth for any element of compensation and does not affect any authority to make advance payments of pay and allowances.

(Added P.L. 99–500, § 101(c), [§ 9103], Oct. 18, 1986, 100 Stat. 1783–118, § 1013, P.L. 99–591, § 101(c), [§ 9103], Oct. 30, 1986, 100 Stat. 3341–118, § 1013, and renumbered § 1014, P.L. 100–26, § 8(b)(2), Apr. 21, 1987, 101 Stat. 285; P.L. 105–85, § 603(d)(1)(E), Nov. 18, 1997, 111 Stat. 1782.)

§ 1015. Annual report on effects of recruitment and retention initiatives

Not later than December 1 of each year, the Secretary of Defense shall submit to Congress a report that sets forth the Secretary's assessment of the effects that the improvements to com-

pensation and other personnel benefits made by title VI of the National Defense Authorization Act for Fiscal Year 2000 are having on the recruitment of persons to join the armed forces and the retention of members of the armed forces.

(Added P.L. 106–65, § 673, Oct. 5, 1999, 113 Stat. 674.)

III. OTHER DEFENSE-RELATED LAWS

[As amended through the end of the 106th Congress, December 31, 2000]

A. WEAPONS PROGRAMS AND LIMITATIONS

1. BALLISTIC MISSILE DEFENSE

a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense

SEC. 231. FUNDING FOR FISCAL YEAR 2001.

Of the funds authorized to be appropriated in section 201(4), $1,875,238,000 shall be available for the National Missile Defense program.

SEC. 232. REPORTS ON BALLISTIC MISSILE THREAT POSED BY NORTH KOREA.

(a) REPORT ON BALLISTIC MISSILE THREAT.—Not later than two weeks after the next flight test by North Korea of a long-range ballistic missile, the President shall submit to Congress, in classified and unclassified form, a report on the North Korean ballistic missile threat to the United States. The report shall include the following:

(1) An assessment of the current North Korean missile threat to the United States.

(2) An assessment of whether the United States is capable of defeating the North Korean long-range missile threat to the United States as of the date of the report.

(3) An assessment of when the United States will be capable of defeating the North Korean missile threat to the United States.

(4) An assessment of the potential for proliferation of North Korean missile technologies to other states and whether such proliferation will accelerate the development of additional long-range ballistic missile threats to the United States.

(b) REPORT ON REDUCING VULNERABILITY.—Not later than two weeks after the next flight test by North Korea of a long-range ballistic missile, the President shall submit to Congress a report providing the following:

(1) Any additional steps the President intends to take to reduce the period of time during which the Nation is vulnerable to the North Korean long-range ballistic missile threat.

(2) The technical and programmatic viability of testing any other missile defense systems against targets with flight characteristics similar to the North Korean long-range missile threat, and plans to do so if such tests are considered to be a viable alternative.

(c) DEFINITION.—For purposes of this section, the term "United States", when used in a geographic sense, means the 50 States, the District of Columbia, and any Commonwealth, territory, or possession of the United States.

SEC. 233. PLAN TO MODIFY BALLISTIC MISSILE DEFENSE ARCHITECTURE.

(a) PLAN.—The Director of the Ballistic Missile Defense Organization shall develop a plan to adapt ballistic missile defense systems and architectures to counter potential threats to the United States, United States forces deployed outside the United States, and other United States national security interests that are posed by longer range medium-range ballistic missiles and intermediate-range ballistic missiles.

(b) USE OF SPACE-BASED SENSORS INCLUDED.—The plan shall include—

(1) potential use of space-based sensors, including the Space-Based Infrared System (SBIRS) Low and Space-Based Infrared System (SBIRS) High, Navy theater missile defense assets, upgrades of land-based theater missile defenses, the airborne laser, and other assets available in the European theater; and

(2) a schedule for ground and flight testing against the identified threats.

(c) REPORT.—The Secretary of Defense shall assess the plan and, not later than February 15, 2001, shall submit to the congressional defense committees a report on the results of the assessment.

SEC. 234. MANAGEMENT OF AIRBORNE LASER PROGRAM.

(a) OVERSIGHT OF FUNDING, SCHEDULE, AND TECHNICAL REQUIREMENTS.—With respect to the program known as of the date of the enactment of this Act as the "Airborne Laser" program, the Secretary of Defense shall require that the Secretary of the Air Force obtain the concurrence of the Director of the Ballistic Missile Defense Organization before the Secretary—

(1) makes any change to the funding plan or schedule for that program that would delay to a date later than September 30, 2003, the first test of the airborne laser that is intended to destroy a ballistic missile in flight;

(2) makes any change to the funding plan for that program in the future-years defense program that would delay the initial operational capability of the airborne laser; and

(3) makes any change to the technical requirements of the airborne laser that would significantly reduce its ballistic missile defense capabilities.

(b) REPORT.—Not later than February 15, 2001, the Director of the Ballistic Missile Defense Organization shall submit to the congressional defense committees a report, to be prepared in coordination with the Secretary of the Air Force, on the role of the airborne laser in the family of systems missile defense architecture developed by the Director of the Ballistic Missile Defense Organization and the Director of the Joint Theater Air and Missile Defense Organization. The report shall be submitted in unclassified and, if necessary, classified form. The report shall include the following:

(1) An assessment by the Secretary of the Air Force and the Director of the Ballistic Missile Defense Organization of the funding plan for that program required to achieve the schedule identified in paragraphs (1) and (2) of subsection (a).

(2) Potential future airborne laser roles in that architecture.

(3) An assessment of the effect of deployment of the airborne laser on requirements for theater ballistic missile defense systems.

(4) An assessment of the cost effectiveness of the airborne laser compared to other ballistic missile defense systems.

(5) An assessment of the relative significance of the airborne laser in the family of systems missile defense architecture.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle C—Program Authorizations, Restrictions, and Limitations

* * * * * * *

SEC. 3132. [10 U.S.C. 2431 note] ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND BALLISTIC MISSILE DEFENSE ORGANIZATION.

(a) JOINTLY FUNDED PROJECTS.—The Secretary of Energy and the Secretary of Defense shall modify the memorandum of understanding for the use of the national laboratories for ballistic missile defense programs, entered into under section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034; 10 U.S.C. 2431 note), to provide for jointly funded projects.

(b) REQUIREMENTS FOR PROJECTS.—The projects referred to in subsection (a) shall—

(1) be carried out by the National Nuclear Security Administration and the Ballistic Missile Defense Organization; and

(2) contribute to sustaining—

(A) the expertise necessary for the viability of such laboratories; and

(B) the capabilities required to sustain the nuclear stockpile.

(c) PARTICIPATION BY NNSA IN CERTAIN BMDO ACTIVITIES.—The Administrator for Nuclear Security and the Director of the

Ballistic Missile Defense Organization shall implement mechanisms that increase the cooperative relationship between those organizations. Those mechanisms may include participation by personnel of the National Nuclear Security Administration in the following activities of the Ballistic Missile Defense Organization:

(1) Peer reviews of technical efforts.

(2) Activities of so-called "red teams".

---

b. National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense

SEC. 231. SPACE BASED INFRARED SYSTEM (SBIRS) LOW PROGRAM.

(a) PRIMARY MISSION OF SBIRS LOW SYSTEM.—The primary mission of the system designated as of the date of the enactment of this Act as the Space Based Infrared System Low (hereinafter in this section referred to as the "SBIRS Low system") is ballistic missile defense. The Secretary of Defense shall carry out the acquisition program for that system consistent with that primary mission.

(b) OVERSIGHT OF CERTAIN PROGRAM FUNCTIONS.—With respect to the SBIRS Low system, the Secretary of Defense shall require that the Secretary of the Air Force obtain the approval of the Director of the Ballistic Missile Defense Organization before the Secretary—

(1) establishes any system level technical requirement or makes any change to any such requirement;

(2) makes any change to the SBIRS Low baseline schedule; or

(3) makes any change to the budget baseline identified in the fiscal year 2000 future-years defense program.

(c) PRIORITY FOR ANCILLARY MISSIONS.—The Secretary of Defense shall ensure that the Director of the Ballistic Missile Defense Organization, in executing the authorities specified in subsection (b), engages in appropriate coordination with the Secretary of the Air Force and elements of the intelligence community to ensure that ancillary SBIRS Low missions (that is, missions other than the primary mission of ballistic missile defense) receive proper priority to the extent that those ancillary missions do not increase technical or schedule risk.

(d) MANAGEMENT AND FUNDING BUDGET ACTIVITY.—The Secretary of Defense shall transfer the management and budgeting of funds for the SBIRS Low system from the Tactical Intelligence and Related Activities (TIARA) budget aggregation to a nonintelligence budget activity of the Air Force.

(e) DEADLINE FOR DEFINITION OF SYSTEM REQUIREMENTS.—The system level technical requirements for the SBIRS Low system shall be defined not later than July 1, 2000.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "system level technical requirements" means those technical requirements and those functional requirements of a system, expressed in terms of technical performance and mission requirements, including test provisions, that determine the direction and progress of the systems engineering effort and the degree of convergence upon a balanced and complete configuration.

(2) The term "SBIRS Low baseline schedule" means a program schedule that includes—

(A) a Milestone II decision on entry into engineering and manufacturing development to be made during fiscal year 2002;

(B) a critical design review to be conducted during fiscal year 2003; and

(C) a first launch of a SBIRS Low satellite to be made during fiscal year 2006.

SEC. 232. THEATER MISSILE DEFENSE UPPER TIER ACQUISITION STRATEGY.

(a) REVISED UPPER TIER STRATEGY.—The Secretary of Defense shall establish an acquisition strategy for the two upper tier missile defense systems that—

(1) retains funding for both of the upper tier systems in separate, independently managed program elements throughout the future-years defense program;

(2) bases funding decisions and program schedules for each upper tier system on the performance of each system independent of the performance of the other system; and

(3) provides for accelerating the deployment of both of the upper tier systems to the maximum extent practicable.

(b) UPPER TIER SYSTEMS DEFINED.—For purposes of this section, the upper tier missile defense systems are the following:

(1) The Navy Theater Wide system.

(2) The Theater High-Altitude Area Defense (THAAD) system.

SEC. 233. ACQUISITION STRATEGY FOR THEATER HIGH-ALTITUDE AREA DEFENSE (THAAD) SYSTEM.

[Omitted-Amendments]

SEC. 234. SPACE-BASED LASER PROGRAM.

(a) STRUCTURE OF PROGRAM.—The Secretary of Defense shall structure the space-based laser program to include—

(1) an integrated flight experiment; and

(2) an ongoing analysis and technology effort to support the development of an objective system design.

(b) INTEGRATED FLIGHT EXPERIMENT PROGRAM BASELINE.—Not later than March 15, 2000, the Secretary of Defense, in consultation with the joint venture contractors for the space-based laser program, shall establish a program baseline for the integrated flight experiment referred to in subsection (a)(1).

(c) STRUCTURE OF INTEGRATED FLIGHT EXPERIMENT PROGRAM BASELINE.—The program baseline established under subsection (b) shall be structured to—

(1) demonstrate at the earliest date consistent with the requirements of this section the fundamental end-to-end capability to acquire, track, and destroy a boosting ballistic missile with a lethal laser from space; and

(2) establish a balance between the use of mature technology and more advanced technology so that the integrated flight experiment, while providing significant information that can be used in planning and implementing follow-on phases of the space-based laser program, will be launched as soon as practicable.

(d) FUNDS AVAILABLE FOR INTEGRATED FLIGHT EXPERIMENT.—Amounts shall be available for the integrated flight experiment as follows:

(1) From amounts available pursuant to section 201(3), $73,840,000.

(2) From amounts available pursuant to section 201(4), $75,000,000.

(e) LIMITATION ON OBLIGATION OF FUNDS FOR INTEGRATED FLIGHT EXPERIMENT.—No funds made available in subsection (d) for the integrated flight experiment may be obligated until the Secretary of the Air Force—

(1) develops a specific spending plan for such amounts; and

(2) provides such plan to the congressional defense committees.

(f) OBJECTIVE SYSTEM DESIGN.—To support the development of an objective system design for a space-based laser system suited to the operational and technological environment that will exist when such a system can be deployed, the Secretary of Defense shall establish an analysis and technology effort that complements the integrated flight experiment. That effort shall include the following:

(1) Research and development on advanced technologies that will not be demonstrated on the integrated flight experiment but may be necessary for an objective system.

(2) Architecture studies to assess alternative constellation and system performance characteristics.

(3) Planning for the development of a space-based laser prototype that—

(A) uses the lessons learned from the integrated flight experiment; and

(B) is supported by the ongoing research and development under paragraph (1), the architecture studies under paragraph (2), and other relevant advanced technology research and development.

(g) FUNDS AVAILABLE FOR OBJECTIVE SYSTEM DESIGN DURING FISCAL YEAR 2000.—During fiscal year 2000, the Secretary of the Air Force may use amounts made available for the integrated flight experiment under subsection (d) for the purpose of supporting the effort specified in subsection (f) if the Secretary of the Air Force first—

(1) determines that such amounts are needed for that purpose;

(2) develops a specific spending plan for such amounts; and

(3) consults with the congressional defense committees regarding such plan.

(h) ANNUAL REPORT.—For each year in the three-year period beginning with the year 2000, the Secretary of Defense shall, not later than March 15 of that year, submit to the congressional defense committees a report on the space-based laser program. Each such report shall include the following:

(1) The program baseline for the integrated flight experiment.

(2) Any changes in that program baseline.

(3) A description of the activities of the space-based laser program in the preceding year.

(4) A description of the activities of the space-based laser program planned for the next fiscal year.

(5) The funding planned for the space-based laser program throughout the future-years defense program.

SEC. 235. CRITERIA FOR PROGRESSION OF AIRBORNE LASER PROGRAM.

(a) MODIFICATION OF PDRR AIRCRAFT.—No modification of the PDRR aircraft may commence until the Secretary of the Air Force certifies to Congress that the commencement of such modification is justified on the basis of existing test data and analyses involving the following activities:

(1) The North Oscura Peak test program.

(2) Scintillometry data collection and analysis.

(3) The lethality/vulnerability program.

(4) The countermeasures test and analysis effort.

(5) Reduction and analysis of atmospheric data for fiscal years 1997 and 1998.

(b) ACQUISITION OF EMD AIRCRAFT AND FLIGHT TEST OF PDRR AIRCRAFT.—In carrying out the Airborne Laser program, the Secretary of Defense shall ensure that the Authority-to-Proceed-2 decision is not made until the Secretary of Defense—

(1) ensures that the Secretary of the Air Force has developed an appropriate plan for resolving the technical challenges identified in the Airborne Laser Program Assessment;

(2) approves that plan; and

(3) submits that plan to the congressional defense committees.

(c) ENTRY INTO EMD PHASE.—The Secretary of Defense shall ensure that the Milestone II decision is not made until—

(1) the PDRR aircraft undergoes a robust series of flight tests that validates the technical maturity of the Airborne Laser program and provides sufficient information regarding the performance of the Airborne Laser system; and

(2) sufficient technical information is available to determine whether adequate progress is being made in the ongoing effort to address the operational issues identified in the Airborne Laser Program Assessment.

(d) MODIFICATION OF EMD AIRCRAFT.—The Secretary of the Air Force may not commence any modification of the EMD aircraft until the Milestone II decision is made.

(e) DEFINITIONS.—In this section:

(1) The term "PDRR aircraft" means the aircraft relating to the program definition and risk reduction phase of the Airborne Laser program.

(2) The term "EMD aircraft" means the aircraft relating to the engineering and manufacturing development phase of the Airborne Laser program.

(3) The term "Authority-to-Proceed-2 decision" means the decision allowing acquisition of the EMD aircraft and flight testing of the PDRR aircraft.

(4) The term "Milestone II decision" means the decision allowing the entry of the Airborne Laser program into the engineering and manufacturing development phase.

(5) The term "Airborne Laser Program Assessment" means the report titled "Assessment of Technical and Operational Aspects of the Airborne Laser Program", submitted to Congress by the Secretary of Defense on March 9, 1999.

SEC. 236. SENSE OF CONGRESS REGARDING BALLISTIC MISSILE DEFENSE TECHNOLOGY FUNDING.

It is the sense of Congress that—

(1) because technology development provides the basis for future weapon systems, it is important to maintain a healthy balance between funding for the development of technology for ballistic missile defense systems and funding for the acquisition of ballistic missile defense systems;

(2) funding planned within the future-years defense program of the Department of Defense should be sufficient to support the development of technology for future and follow-on ballistic missile defense systems while simultaneously supporting the acquisition of ballistic missile defense systems; and

(3) the Secretary of Defense should seek to ensure that funding in the future-years defense program is adequate both for the development of technology for advanced ballistic missile defense systems and for the major existing programs for the acquisition of ballistic missile defense systems.

SEC. 237. REPORT ON NATIONAL MISSILE DEFENSE.

Not later than March 15, 2000, the Secretary of Defense shall submit to Congress the Secretary's assessment of the advantages or disadvantages of a two-site deployment of a ground-based National Missile Defense system, with special reference to considerations of the world-wide ballistic missile threat, defensive coverage, redundancy and survivability, and economies of scale.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle C—Program Authorizations, Restrictions, and Limitations

* * * * * * *

SEC. 3137. SUPPORT OF THEATER BALLISTIC MISSILE DEFENSE ACTIVITIES OF THE DEPARTMENT OF DEFENSE.

(a) FUNDS TO CARRY OUT CERTAIN BALLISTIC MISSILE DEFENSE ACTIVITIES.—Of the amounts authorized to be appropriated to the Department of Energy pursuant to section 3101, $25,000,000 shall be available for research, development, and demonstration activities to support the mission of the Ballistic Missile Defense Organization of the Department of Defense, including the following activities:

(1) Technology development, concept demonstration, and integrated testing to improve reliability and reduce risk in hit-to-kill interceptors for theater ballistic missile defense.

(2) Support for science and engineering teams to address technical problems identified by the Director of the Ballistic Missile Defense Organization as critical to acquisition of a theater ballistic missile defense capability.

(b) MEMORANDUM OF UNDERSTANDING.—The activities referred to in subsection (a) shall be carried out under the memorandum of understanding entered into by the Secretary of Energy and the Secretary of Defense for the use of national laboratories for ballistic missile defense programs, as required by section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034).

(c) METHOD OF FUNDING.—Funds for activities referred to in subsection (a) may be provided—

(1) by direct payment from funds available pursuant to subsection (a); or

(2) in the case of such an activity carried out by a national laboratory but paid for by the Ballistic Missile Defense Organization, through a method under which the Secretary of Energy waives any requirement for the Department of Defense to pay any indirect expenses (including overhead and federal administrative charges) of the Department of Energy or its contractors.

---

c. National Missile Defense Act of 1999

(Public Law 106–38, approved July 22, 1999)

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Missile Defense Act of 1999".

SEC. 2. [10 U.S.C. 2431 note] NATIONAL MISSILE DEFENSE POLICY.

It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate) with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense.

SEC. 3. [22 U.S.C. 5901 note] POLICY ON REDUCTION OF RUSSIAN NUCLEAR FORCES.

It is the policy of the United States to seek continued negotiated reductions in Russian nuclear forces.

* * * * * * *

---

d. Section 2705 of the Foreign Affairs Reform and Restructuring Act of 1998

(division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277; approved Oct. 21, 1998)

SEC. 2705. [22 U.S.C. 1928 note] RESTRICTIONS AND REQUIREMENTS RELATING TO BALLISTIC MISSILE DEFENSE.

(a) POLICY OF SECTION.—This section is enacted in order to implement the policy set forth in section 2702(c). [1]

(b) RESTRICTION ON ENTRY INTO FORCE OF ABM/TMD DEMARCATION AGREEMENTS.—An ABM/TMD demarcation agreement shall not be binding on the United States, and shall not enter into force with respect to the United States, unless, after the date of enactment of this Act, that agreement is specifically approved with the advice and consent of the United States Senate pursuant to Article II, section 2, clause 2 of the Constitution.

(c) SENSE OF CONGRESS WITH RESPECT TO DEMARCATION AGREEMENTS.—

(1) RELATIONSHIP TO MULTILATERALIZATION OF ABM TREATY.—It is the sense of Congress that no ABM/TMD demarcation agreement will be considered for advice and consent to ratification unless, consistent with the certification of the President pursuant to condition (9) of the resolution of ratification of the CFE Flank Document, the President submits for Senate advice and consent to ratification any agreement, arrangement, or understanding that would—

(A) add one or more countries as State Parties to the ABM Treaty, or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty; or

(B) change the geographic scope or coverage of the ABM Treaty, or otherwise modify the meaning of the term "national territory" as used in Article VI and Article IX of the ABM Treaty.

(2) PRESERVATION OF UNITED STATES THEATER BALLISTIC MISSILE DEFENSE POTENTIAL.—It is the sense of Congress that no ABM/TMD demarcation agreement that would reduce the

---

[1] The subsection (c) referred to in section 2705 provides as follows:

(c) POLICY WITH RESPECT TO BALLISTIC MISSILE DEFENSE COOPERATION.—

(1) IN GENERAL.—As the United States proceeds with efforts to develop defenses against ballistic missile attack, it should seek to foster a climate of cooperation with Russia on matters related to missile defense. In particular, the United States and its NATO allies should seek to cooperate with Russia in such areas as early warning.

(2) DISCUSSIONS WITH NATO ALLIES.—The United States should initiate discussions with its NATO allies for the purpose of examining the feasibility of deploying a ballistic missile defense capable of protecting NATO's southern and eastern flanks from a limited ballistic missile attack.

(3) CONSTITUTIONAL PREROGATIVES.—Even as the Congress seeks to promote ballistic missile defense cooperation with Russia, it must insist on its constitutional prerogatives regarding consideration of arms control agreements with Russia that bear on ballistic missile defense.

capabilities of United States theater missile defense systems, or the numbers or deployment patterns of such systems, will be approved for entry into force with respect to the United States.

(d) REPORT ON COOPERATIVE PROJECTS WITH RUSSIA.—Not later than January 1, 1999, and January 1, 2000, the President shall submit to the Committees on International Relations, National Security, and Appropriations of the House of Representatives and the Committees on Foreign Relations, Armed Services, and Appropriations of the Senate a report on cooperative projects with Russia in the area of ballistic missile defense, including in the area of early warning. Each such report shall include the following:

(1) COOPERATIVE PROJECTS.—A description of all cooperative projects conducted in the area of early warning and ballistic missile defense during the preceding fiscal year and the fiscal year during which the report is submitted.

(2) FUNDING.—A description of the funding for such projects during the preceding fiscal year and the year during which the report is submitted and the proposed funding for such projects for the next fiscal year.

(3) STATUS OF DIALOGUE OR DISCUSSIONS.—A description of the status of any dialogue or discussions conducted during the preceding fiscal year between the United States and Russia aimed at exploring the potential for mutual accommodation of outstanding issues between the two nations on matters relating to ballistic missile defense and the ABM Treaty, including the possibility of developing a strategic relationship not based on mutual nuclear threats.

(e) DEFINITIONS.—In this section:

(1) ABM/TMD DEMARCATION AGREEMENT.—The term "ABM/TMD demarcation agreement" means any agreement that establishes a demarcation between theater ballistic missile defense systems and strategic antiballistic missile defense systems for purposes of the ABM Treaty.

(2) ABM TREATY.—The term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed at Moscow on May 26, 1972 (23 UST 3435), and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974 (27 UST 1645).

---

e. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense

SEC. 231. SENSE OF CONGRESS ON NATIONAL MISSILE DEFENSE COVERAGE.

It is the sense of Congress that—

(1) any national missile defense system deployed by the United States must provide effective defense against limited, accidental, or unauthorized ballistic missile attack for all 50 States; and

(2) the territories of the United States should be afforded effective protection against ballistic missile attack.

SEC. 232. LIMITATION ON FUNDING FOR THE MEDIUM EXTENDED AIR DEFENSE SYSTEM.

None of the funds appropriated for fiscal year 1999 for the Ballistic Missile Defense Organization may be obligated for the Medium Extended Air Defense System (MEADS) until the Secretary of Defense certifies to Congress that the future-years defense program includes sufficient programmed funding for that system to complete the design and development phase. If the Secretary does not submit such a certification by January 1, 1999, then (effective as of that date) the funds appropriated for fiscal year 1999 for the Ballistic Missile Defense Organization that are allocated for the MEADS program shall be available to support alternative programmatic and technical approaches to meeting the requirement for mobile theater missile defense that was to be met by the MEADS system.

SEC. 233. LIMITATION ON FUNDING FOR COOPERATIVE BALLISTIC MISSILE DEFENSE PROGRAMS.

Of the funds appropriated for fiscal year 1999 for the Russian-American Observational Satellite (RAMOS) program, $5,000,000 may not be obligated until the Secretary of Defense certifies to Congress that the Department of Defense has received detailed information concerning the nature, extent, and military implications of the transfer of ballistic missile technology from Russian sources to Iran.

SEC. 234. SENSE OF CONGRESS WITH RESPECT TO BALLISTIC MISSILE DEFENSE COOPERATION WITH RUSSIA.

It is the sense of Congress that, as the United States proceeds with efforts to develop defenses against ballistic missile attack, the United States should seek to foster a climate of cooperation with Russia on matters related to ballistic missile defense and that, in particular, the United States and its NATO allies should seek to cooperate with Russia in such areas as early warning of ballistic missile launches.

SEC. 235. BALLISTIC MISSILE DEFENSE PROGRAM ELEMENTS.

[Omitted-Amendment**]**

SEC. 236. RESTRUCTURING OF ACQUISITION STRATEGY FOR THEATER HIGH-ALTITUDE AREA DEFENSE (THAAD) SYSTEM.

(a) CONTINUED INDEPENDENT REVIEW.—The Secretary of Defense shall take appropriate steps to assure continued independent review, as the Secretary determines is needed, of the Theater High-Altitude Area Defense (THAAD) program.

(b) COST SHARING ARRANGEMENT.—(1) The Secretary of Defense shall contractually establish with the THAAD interceptor prime contractor an appropriate arrangement for sharing between the United States and that contractor the costs for flight test failures of the interceptor missile for the THAAD system beginning with the flight test numbered 9.

(2) For purposes of paragraph (1), the term "THAAD interceptor prime contractor" means the firm that as of May 14, 1998, is the prime contractor for the interceptor missile for the Theater High-Altitude Area Defense system.

(c) ENGINEERING AND MANUFACTURING DEVELOPMENT PHASE FOR OTHER ELEMENTS OF THE THAAD SYSTEM.—The Secretary of Defense shall proceed with the milestone approval process for the Engineering and Manufacturing Development phase for the Battle Management and Command, Control, and Communications (BM/C^3) element of the THAAD system and for the Ground Based Radar (GBR) element for that system without regard to the stage of development of the interceptor missile for that system.

(d) PLAN FOR CONTINGENCY CAPABILITY.—(1) The Secretary of Defense shall prepare a plan that would allow for deployment of THAAD missiles and the other elements of the THAAD system referred to in subsection (c) in response to theater ballistic missile threats that evolve before United States military forces are equipped with the objective configuration of those missiles and elements.

(2) The Secretary shall submit a report on the plan to the congressional defense committees by December 15, 1998.

(e) LIMITATION ON ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT PHASE.—(1) The Secretary of Defense may not approve the commencement of the Engineering and Manufacturing Development phase for the interceptor missile for the THAAD system until there have been 3 successful tests of that missile.

(2) If the Secretary determines, after a second successful test of the interceptor missile of the THAAD system, that the THAAD program has achieved a sufficient level of technical maturity, the Secretary may waive the limitation specified in paragraph (1).

(3) If the Secretary grants a waiver under paragraph (2), the Secretary shall, not later than 60 days after the date of the issuance of the waiver, submit to the congressional defense committees a report describing the technical rationale for that action.

(4) For purposes of paragraph (1), a successful test of the interceptor missile of the THAAD system is a body-to-body intercept by that missile of a ballistic missile target.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle C—Program Authorizations, Restrictions, and Limitations

* * * * * * *

SEC. 3132. SUPPORT OF BALLISTIC MISSILE DEFENSE ACTIVITIES OF THE DEPARTMENT OF DEFENSE.

(a) FUNDS TO CARRY OUT CERTAIN BALLISTIC MISSILE DEFENSE ACTIVITIES.—Of the amounts authorized to be appropriated to the Department of Energy pursuant to section 3101, $30,000,000 shall be available for research, development, and demonstration activities to support the mission of the Ballistic Missile Defense Organization of the Department of Defense, including the following activities:

(1) Technology development, concept demonstration, and integrated testing to improve reliability and reduce risk in hit-to-kill interceptors for missile defense.

(2) Support for science and engineering teams to address technical problems identified by the Director of the Ballistic Missile Defense Organization as critical to acquisition of a theater missile defense capability.

(b) MEMORANDUM OF UNDERSTANDING.—The activities referred to in subsection (a) shall be carried out under the memorandum of understanding entered into by the Secretary of Energy and the Secretary of Defense for the use of national laboratories for ballistic missile defense programs, as required by section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034).

(c) METHOD OF FUNDING.—Funds for activities referred to in subsection (a) may be provided—

(1) by direct payment from funds available pursuant to subsection (a); or

(2) in the case of such an activity carried out by a national laboratory but paid for by the Ballistic Missile Defense Organization, through a method under which the Secretary of Energy waives any requirement for the Department of Defense to pay any indirect expenses (including overhead and federal administrative charges) of the Department of Energy or its contractors.

---

f. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense Programs

SEC. 231. [10 U.S.C. 2431 note] NATIONAL MISSILE DEFENSE PROGRAM.

(a) PROGRAM STRUCTURE.—To preserve the option of achieving an initial operational capability in fiscal year 2003, the Secretary of Defense shall ensure that the National Missile Defense Program is structured and programmed for funding so as to support a test, in fiscal year 1999, of an integrated national missile defense system that is representative of the national missile defense system architecture that could achieve initial operational capability in fiscal year 2003.

(b) ELEMENTS OF NMD SYSTEM.—The national missile defense system architecture specified in subsection (a) shall consist of the following elements:

(1) An interceptor system that optimizes defensive coverage of the continental United States, Alaska, and Hawaii against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).

(2) Ground-based radars.

(3) Space-based sensors.

(4) Battle management, command, control, and communications (BM/C^3).

(c) PLAN FOR NMD SYSTEM DEVELOPMENT AND DEPLOYMENT.—Not later than February 15, 1998, the Secretary of Defense shall submit to the congressional defense committees a plan for the development and deployment of a national missile defense system that could achieve initial operational capability in fiscal year 2003. The plan shall include the following matters:

(1) A detailed description of the system architecture selected for development.

(2) A discussion of the justification for the selection of that particular architecture.

(3) The Secretary's estimate of the amounts of the appropriations that would be necessary for research, development, test, evaluation, and for procurement for each of fiscal years 1999 through 2003 in order to achieve an initial operational capability of the system architecture in fiscal year 2003.

(4) For each activity necessary for the development and deployment of the national missile defense system architecture selected by the Secretary that would at some point conflict with the terms of the ABM Treaty, if any—

(A) a description of the activity;

(B) a description of the point at which the activity would conflict with the terms of the ABM Treaty;

(C) the legal analysis justifying the Secretary's determination regarding the point at which the activity would conflict with the terms of the ABM Treaty; and

(D) an estimate of the time at which such point would be reached in order to achieve a test of an integrated missile defense system in fiscal year 1999 and initial operational capability of such a system in fiscal year 2003.

(d) FUNDING FOR FISCAL YEAR 1998.—Of the funds authorized to be appropriated under section 201(4), $978,091,000 shall be available for the National Missile Defense Program.

(e) ABM TREATY DEFINED.—In this section, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed at Moscow on May 26, 1972, and includes the Protocol to that treaty, signed at Moscow on July 3, 1974.

* * * * * * *

SEC. 233. [10 U.S.C. 221 note] 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 the date of the enactment of this Act 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).

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle C—Program Authorizations, Restrictions, and Limitations

SEC. 3131. [10 U.S.C. 2431 note] MEMORANDUM OF UNDERSTANDING FOR USE OF NATIONAL LABORATORIES FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) MEMORANDUM OF UNDERSTANDING.—The Secretary of Energy and the Secretary of Defense shall enter into a memorandum of understanding for the purpose of improving and facilitating the use by the Secretary of Defense of the expertise of the national laboratories for the ballistic missile defense programs of the Department of Defense.

(b) ASSISTANCE.—The memorandum of understanding shall provide that the Secretary of Defense shall request such assistance with respect to the ballistic missile defense programs of the Department of Defense as the Secretary of Defense and the Secretary of Energy determine can be provided through the technical skills and experience of the national laboratories, using such financial arrangements as the Secretaries determine are appropriate.

(c) ACTIVITIES.—The memorandum of understanding shall provide that the national laboratories shall carry out those activities necessary to respond to requests for assistance from the Secretary of Defense referred to in subsection (b). Such activities may include

the identification of technical modifications and test techniques, the analysis of physics problems, the consolidation of range and test activities, and the analysis and simulation of theater missile defense deployment problems.

(d) NATIONAL LABORATORIES.—For purposes of this section, the national laboratories are—

(1) the Lawrence Livermore National Laboratory, Livermore, California;

(2) the Los Alamos National Laboratory, Los Alamos, New Mexico; and

(3) the Sandia National Laboratories, Albuquerque, New Mexico.

---

g. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense Programs

SEC. 241. FUNDING FOR BALLISTIC MISSILE DEFENSE PROGRAMS FOR FISCAL YEAR 1997.

(a) PROGRAM AMOUNTS.—Of the amount appropriated pursuant to section 201(4), the following amounts may be obligated for the following systems managed by the Ballistic Missile Defense Organization:

(1) For the Theater High Altitude Area Defense (THAAD) System, $621,798,000.

(2) For the Navy Upper Tier (Theater Wide) system, $304,171,000.

(3) For the National Missile Defense System, $858,437,000.

(4) For the Corps Surface-to-Air Missile (SAM)/Medium Extended Air Defense System (MEADS), $56,200,000.

(b) LIMITATION.—None of the funds appropriated or otherwise made available for the Department of Defense pursuant to this or any other Act may be obligated or expended by the Office of the Under Secretary of Defense for Acquisition and Technology for official representation activities, or related activities, until the Secretary of Defense certifies to Congress that—

(1) the Secretary has made available for obligation the funds provided under subsection (a) for the purposes specified in that subsection and in the amounts appropriated pursuant to that subsection; and

(2) the Secretary has included the Navy Upper Tier theater missile defense system in the theater missile defense core program.

(c) LIMITATIONS.—Not more than $15,000,000 of the amount available for the Corps SAM/MEADS program under subsection (a) may be obligated until the Secretary of Defense submits to the congressional defense committees the following:

(1) An initial program estimate for the Corps SAM/MEADS program, including a tentative schedule of major milestones and an estimate of the total program cost through initial operational capability.

(2) A report on the options associated with the use of existing systems, technologies, and program management mechanisms to satisfy the requirement for the Corps surface-to-air missile, including an assessment of cost and schedule implications in relation to the program estimate submitted under paragraph (1).

(3) A certification that there will be no increase in overall United States funding commitment to the project definition and validation phase of the Corps SAM/MEADS program as a result of the withdrawal of France from participation in the program.

* * * * * * *

SEC. 246. CAPABILITY OF NATIONAL MISSILE DEFENSE SYSTEM.

The Secretary of Defense shall ensure that any National Missile Defense system deployed by the United States is capable of defeating the threat posed by the Taepo Dong II missile of North Korea.

SEC. 247. ACTIONS TO LIMIT ADVERSE EFFECTS ON PRIVATE SECTOR EMPLOYMENT OF ESTABLISHMENT OF NATIONAL MISSILE DEFENSE JOINT PROGRAM OFFICE.

The Secretary of Defense shall take such actions as are necessary in connection with the establishment of the National Missile Defense Joint Program Office within the Ballistic Missile Defense Organization to ensure that the establishment of that office does not make it necessary for a Federal Government contractor to reduce significantly the number of persons employed by that contractor for supporting the national missile defense development program at any particular location outside the National Capital Region (as defined in section 2674(f)(2) of title 10, United States Code).

---

h. Ballistic Missile Defense Act of 1995 and Other Provisions of the National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Ballistic Missile Defense Act of 1995

SEC. 231. [10 U.S.C. 2431 note] SHORT TITLE.

This subtitle may be cited as the "Ballistic Missile Defense Act of 1995".

SEC. 232. [10 U.S.C. 2431 note] FINDINGS.

Congress makes the following findings:

(1) The emerging threat that is posed to the national security interests of the United States by the proliferation of ballistic missiles is significant and growing, both in terms of numbers of missiles and in terms of the technical capabilities of those missiles.

(2) The deployment of ballistic missile defenses is a necessary, but not sufficient, element of a broader strategy to discourage both the proliferation of weapons of mass destruction and the proliferation of the means of their delivery and to defend against the consequences of such proliferation.

(3) The deployment of effective Theater Missile Defense systems can deter potential adversaries of the United States from escalating a conflict by threatening or attacking United States forces or the forces or territory of coalition partners or allies of the United States with ballistic missiles armed with weapons of mass destruction to offset the operational and technical advantages of the United States and its coalition partners and allies.

(4) United States intelligence officials have provided intelligence estimates to congressional committees that (A) the trend in missile proliferation is toward longer range and more sophisticated ballistic missiles, (B) North Korea may deploy an intercontinental ballistic missile capable of reaching Alaska or beyond within five years, and (C) although a new, indigenously developed ballistic missile threat to the continental United States is not foreseen within the next ten years, determined countries can acquire intercontinental ballistic missiles in the near future and with little warning by means other than indigenous development.

(5) The development and deployment by the United States and its allies of effective defenses against ballistic missiles of all ranges will reduce the incentives for countries to acquire such missiles or to augment existing missile capabilities.

(6) The concept of mutual assured destruction (based upon an offense-only form of deterrence), which is the major philosophical rationale underlying the ABM Treaty, is now questionable as a basis for stability in a multipolar world in which the United States and the states of the former Soviet Union are seeking to normalize relations and eliminate Cold War attitudes and arrangements.

(7) The development and deployment of a National Missile Defense system against the threat of limited ballistic missile attacks—

(A) would strengthen deterrence at the levels of forces agreed to by the United States and Russia under the Strategic Arms Reduction Talks Treaty (START–I); and

(B) would further strengthen deterrence if reductions below the levels permitted under START–I should be agreed to and implemented in the future.

(8) The distinction made during the Cold War, based upon the technology of the time, between strategic ballistic missiles and nonstrategic ballistic missiles, which resulted in the distinction made in the ABM Treaty between strategic defense and nonstrategic defense, has become obsolete because of tech-

nological advancement (including the development by North Korea of long-range Taepo-Dong I and Taepo-Dong II missiles) and, therefore, that distinction in the ABM Treaty should be reviewed.

SEC. 233. [10 U.S.C. 2431 note] BALLISTIC MISSILE DEFENSE POLICY.

It is the policy of the United States—

(1) to deploy affordable and operationally effective theater missile defenses to protect forward-deployed and expeditionary elements of the Armed Forces of the United States and to complement the missile defense capabilities of forces of coalition partners and of allies of the United States; and

(2) to seek a cooperative, negotiated transition to a regime that does not feature an offense-only form of deterrence as the basis for strategic stability.

SEC. 234. [10 U.S.C. 2431 note] THEATER MISSILE DEFENSE ARCHITECTURE.

(a) ESTABLISHMENT OF CORE PROGRAM.—To implement the policy established in paragraph (1) of section 233, the Secretary of Defense shall restructure the core theater missile defense program to consist of the following systems:

(1) The Patriot PAC–3 system.

(2) The Navy Area Defense system.

(3) The Theater High-Altitude Area Defense (THAAD) system.

(4) The Navy Theater Wide system.

(b) USE OF STREAMLINED ACQUISITION PROCEDURES.—The Secretary of Defense shall prescribe and use streamlined acquisition policies and procedures to reduce the cost and increase the efficiency of developing and deploying the theater missile defense systems specified in subsection (a).

(c) INTEROPERABILITY AND SUPPORT OF CORE SYSTEMS.—To maximize effectiveness and flexibility of the systems comprising the core theater missile defense program, the Secretary of Defense shall ensure that those systems are integrated and complementary and are fully capable of exploiting external sensor and battle management support from systems such as—

(A) the Cooperative Engagement Capability (CEC) system of the Navy;

(B) airborne sensors; and

(C) space-based sensors (including, in particular, the Space and Missile Tracking System).

(d) FOLLOW-ON SYSTEMS.—(1) The Secretary of Defense shall prepare an affordable development plan for theater missile defense systems to be developed as follow-on systems to the core systems specified in subsection (a). The Secretary shall make the selection of a system for inclusion in the plan based on the capability of the system to satisfy military requirements not met by the systems in the core program and on the capability of the system to use prior investments in technologies, infrastructure, and battle-management capabilities that are incorporated in, or associated with, the systems in the core program.

(2) The Secretary may not proceed with the development of a follow-on theater missile defense system beyond the Demonstra-

tion/Validation stage of development unless the Secretary designates that system as a part of the core program under this section and submits to the congressional defense committees notice of that designation. The Secretary shall include with any such notification a report describing—

(A) the requirements for the system and the specific threats that such system is designed to counter;

(B) how the system will relate to, support, and build upon existing core systems;

(C) the planned acquisition strategy for the system; and

(D) a preliminary estimate of total program cost for that system and the effect of development and acquisition of such system on Department of Defense budget projections.

(e) PROGRAM ACCOUNTABILITY REPORT.—(1) As part of the annual report of the Ballistic Missile Defense Organization required by section 224 of Public Law 101–189 (10 U.S.C. 2431 note), the Secretary of Defense shall describe the technical milestones, the schedule, and the cost of each phase of development and acquisition (together with total estimated program costs) for each core and follow-on theater missile defense program.

(2) As part of such report, the Secretary shall describe, with respect to each program covered in the report, any variance in the technical milestones, program schedule milestones, and costs for the program compared with the information relating to that program in the report submitted in the previous year and in the report submitted in the first year in which that program was covered.

(f) REPORTS ON TMD SYSTEM LIMITATIONS UNDER ABM TREATY.—(1) Whenever, after January 1, 1993, the Secretary of Defense issues a certification with respect to the compliance of a particular Theater Missile Defense system with the ABM Treaty, the Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of such certification. Such transmittal shall be made not later than 30 days after the date on which such certification is issued, except that in the case of a certification issued before the date of the enactment of this Act, such transmittal shall be made not later than 60 days after the date of the enactment of this Act.

(2) If a certification under paragraph (1) is based on application of a policy concerning United States compliance with the ABM Treaty that differs from the policy described in section 235(b)(1), the Secretary shall include with the transmittal under that paragraph a report providing a detailed assessment of—

(A) how the policy applied differs from the policy described in section 235(b)(1); and

(B) how the application of that policy (rather than the policy described in section 235(b)(1)) will affect the cost, schedule, and performance of that system.

SEC. 235. [10 U.S.C. 2431 note] PROHIBITION ON USE OF FUNDS TO IMPLEMENT AN INTERNATIONAL AGREEMENT CONCERNING THEATER MISSILE DEFENSE SYSTEMS.

(a) FINDINGS.—(1) Congress hereby reaffirms—

(A) the finding in section 234(a)(7) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160;

107 Stat. 1595; 10 U.S.C. 2431 note) that the ABM Treaty was not intended to, and does not, apply to or limit research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles, regardless of the capabilities of such missiles, unless those systems, system upgrades, or system components are tested against or have demonstrated capabilities to counter modern strategic ballistic missiles; and

(B) the statement in section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2700) that the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered into pursuant to the treaty making power of the President under the Constitution.

(2) Congress also finds that the demarcation standard described in subsection (b)(1) for compliance of a missile defense system, system upgrade, or system component with the ABM Treaty is based upon current technology.

(b) SENSE OF CONGRESS CONCERNING COMPLIANCE POLICY.—It is the sense of Congress that—

(1) unless a missile defense system, system upgrade, or system component (including one that exploits data from space-based or other external sensors) is flight tested in an ABM-qualifying flight test (as defined in subsection (e)), that system, system upgrade, or system component has not, for purposes of the ABM Treaty, been tested in an ABM mode nor been given capabilities to counter strategic ballistic missiles and, therefore, is not subject to any application, limitation, or obligation under the ABM Treaty; and

(2) any international agreement that would limit the research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles in a manner that would be more restrictive than the compliance criteria specified in paragraph (1) should be entered into only pursuant to the treaty making powers of the President under the Constitution.

(c) PROHIBITION ON FUNDING.—Funds appropriated or otherwise made available to the Department of Defense for fiscal year 1996 may not be obligated or expended to implement an agreement, or any understanding with respect to interpretation of the ABM Treaty, between the United States and any of the independent states of the former Soviet Union entered into after January 1, 1995, that—

(1) would establish a demarcation between theater missile defense systems and anti-ballistic missile systems for purposes of the ABM Treaty; or

(2) would restrict the performance, operation, or deployment of United States theater missile defense systems.

(d) EXCEPTIONS.—Subsection (c) does not apply—

(1) to the extent provided by law in an Act enacted after this Act;

(2) to expenditures to implement that portion of any such agreement or understanding that implements the policy set forth in subsection (b)(1); or

(3) to expenditures to implement any such agreement or understanding that is approved as a treaty or by law.

(e) ABM-QUALIFYING FLIGHT TEST DEFINED.—For purposes of this section, an ABM-qualifying flight test is a flight test against a ballistic missile which, in that flight test, exceeds (1) a range of 3,500 kilometers, or (2) a velocity of 5 kilometers per second.

SEC. 236. [10 U.S.C. 2431 note] BALLISTIC MISSILE DEFENSE COOPERATION WITH ALLIES.

It is in the interest of the United States to develop its own missile defense capabilities in a manner that will permit the United States to complement the missile defense capabilities developed and deployed by its allies and possible coalition partners. Therefore, the Congress urges the President—

(1) to pursue high-level discussions with allies of the United States and selected other states on the means and methods by which the parties on a bilateral basis can cooperate in the development, deployment, and operation of ballistic missile defenses;

(2) to take the initiative within the North Atlantic Treaty Organization to develop consensus in the Alliance for a timely deployment of effective ballistic missile defenses by the Alliance; and

(3) in the interim, to seek agreement with allies of the United States and selected other states on steps the parties should take, consistent with their national interests, to reduce the risks posed by the threat of limited ballistic missile attacks, such steps to include—

(A) the sharing of early warning information derived from sensors deployed by the United States and other states;

(B) the exchange on a reciprocal basis of technical data and technology to support both joint development programs and the sale and purchase of missile defense systems and components; and

(C) operational level planning to exploit current missile defense capabilities and to help define future requirements.

SEC. 237. [10 U.S.C. 2431 note] ABM TREATY DEFINED.

For purposes of this subtitle, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, and signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

SEC. 238. [10 U.S.C. 2431 note] REPEAL OF MISSILE DEFENSE ACT OF 1991.

The Missile Defense Act of 1991 (10 U.S.C. 2431 note) is repealed.

Subtitle D—Other Ballistic Missile Defense Provisions

SEC. 251. [10 U.S.C. 221 note] BALLISTIC MISSILE DEFENSE PROGRAM ELEMENTS.

[Repealed by section 235(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1953). Program elements of ballistic missile defense programs are now codified at 10 U.S.C. 223.]

* * * * * * *

---

i. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Missile Defense Programs

SEC. 231. [10 U.S.C. 2431 note] COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY.

(a) GENERAL LIMITATION.—Funds appropriated to the Department of Defense for fiscal year 1995, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1995 or for any fiscal year before 1995, may not be obligated or expended—

(1) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter; or

(2) for the acquisition of any material or equipment (including long lead materials, components, piece parts, or test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or components, except for material or equipment required for development or testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

(b) LIMITATION RELATING TO BRILLIANT EYES.—Of the funds appropriated pursuant to the authorizations of appropriations in section 201 that are made available for the space-based, midcourse missile tracking system known as the Brilliant Eyes program, not more than $80,000,000 may be obligated until the Secretary of Defense submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review conducted pursuant to subsection (c).

(c) COMPLIANCE REVIEW FOR BRILLIANT EYES.—The Secretary of Defense shall review the Brilliant Eyes program to determine whether, and under what conditions, the development, testing, and deployment of the Brilliant Eyes missile tracking system in conjunction with a theater ballistic missile defense system, with a limited national missile defense system, and with both such systems,

would be in compliance with the ABM Treaty, including the interpretation of that treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

(d) COMPLIANCE REVIEW FOR NAVY UPPER TIER SYSTEM.—(1) The Secretary of Defense shall review the theater ballistic missile program known as the Navy Upper Tier program to determine whether the development, testing, and deployment of the system being developed under that program would be in compliance with the ABM Treaty, including the interpretation of the Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

(2) Of the funds made available to the Department of Defense for fiscal year 1995, not more than $40,000,000 may be obligated for the Navy Upper Tier program before the date on which the Secretary submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term "July 13, 1993, ACDA letter" means the letter dated July 13, 1993, from the Acting Director of the Arms Control and Disarmament Agency to the chairman of the Committee on Foreign Relations of the Senate relating to the correct interpretation of the ABM Treaty and accompanied by an enclosure setting forth such interpretation.

(2) The term "ABM Treaty" means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

(3) The term "appropriate congressional committees" means—

(A) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

SEC. 232. MODIFICATIONS TO ANTI-BALLISTIC MISSILE TREATY TO BE ENTERED INTO ONLY THROUGH TREATY MAKING POWER.

(a) REQUIREMENT FOR USE OF TREATY MAKING POWER.—The United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.

(b) ABM TREATY DEFINED.—In this section, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed in Moscow on May 26, 1972, with related protocol, signed in Moscow on July 3, 1974.

SEC. 233. REVISIONS TO THE MISSILE DEFENSE ACT OF 1991.

[Omitted—Amendment to the Missile Defense Act of 1991 (part C of title II of Public Law 102–190; 10 U.S.C. 2431 note), which was repealed by section 238 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).**]**

SEC. 234. LIMITATION ON FLIGHT TESTS OF CERTAIN MISSILES.

(a) LIMITATION.—The Secretary of Defense may not conduct the launch of a target ballistic missile as part of the theater missile defense extended range test program if an anticipated result of the launch of that target missile under that test program would be release of debris in a land area of the United States outside a designated Department of Defense test range or an extension thereof in force as of July 1, 1994.

(b) DEFINITION OF DEBRIS.—For purposes of subsection (a), the term "debris" does not include particulate matter that is regulated for considerations of air quality.

(c) CERTAIN TESTING UNAFFECTED.—Nothing in this section shall be construed as prohibiting or limiting testing of cruise missiles, unmanned aerial vehicles (UAVs), or precision-guided munitions.

(d) EXPIRATION OF LIMITATION.—The limitation in subsection (a) shall expire on the later of—

(1) June 30, 1995; or

(2) the end of the 30-day period beginning on the date of the publication by the Secretary of Defense of the Final Environmental Impact Statement on the Theater Missile Defense Extended Test Range.

SEC. 235. [10 U.S.C. 221 note] PROGRAM ELEMENTS FOR BALLISTIC MISSILE DEFENSE ORGANIZATION.

[Repealed by section 253(8) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).]

---

j. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Missile Defense Programs

* * * * * * *

SEC. 233. PATRIOT ADVANCED CAPABILITY–3 THEATER MISSILE DEFENSE SYSTEM.

(a) COMPETITION FOR MISSILE SELECTION.—The Secretary of Defense shall continue the strategy being carried out by the Ballistic Missile Defense Organization as of October 1, 1993, for selection of the best technology (in terms of cost, schedule, risk, and performance) to meet the missile requirements for the Patriot Advanced Capability–3 (PAC–3) theater missile defense system. That strategy, consisting of flight testing, ground testing, simulations, and other analyses of the weapon systems referred to in subsection (d), shall be continued until the Secretary determines that the Ballistic Missile Defense Organization has adequate information upon which to base a decision as to which missile will be selected to proceed into the Engineering and Manufacturing Development stage.

(b) IMPLICATIONS OF DELAY.—If there is a delay (based upon the schedule in effect in October 1993) in the selection described

in subsection (a) of the missile for the Patriot Advanced Capability–3 system, the Secretary of Defense shall ensure that demonstration and validation of both competing systems can continue as needed to support an informed decision for such selection.

(c) FUNDING FOR CERTAIN BALLISTIC MISSILE RDT&E.—If a decision is not made before February 28, 1994, to proceed into the Engineering and Manufacturing Development stage under a weapon system program referred to in subsection (d), the funds appropriated pursuant to the authorization of appropriations in section 201 that are available for engineering and manufacturing development for such a program shall be available for research, development, test, and evaluation of the Patriot PAC–3 Missile program.

(d) COVERED WEAPON SYSTEM PROGRAMS.—For purposes of subsections (a) and (c), the weapon system programs referred to in this subsection are as follows:

(1) The Patriot Multimode Missile Program.

(2) The Extended Range Interceptor (ERINT) missile program.

SEC. 234. [10 U.S.C. 2431 note] COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY.

[Repealed by section 253(6) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).]

SEC. 235. [10 U.S.C. 2431 note] THEATER MISSILE DEFENSE MASTER PLAN.

(a) INTEGRATION AND COMPATIBILITY.—In carrying out the Theater Missile Defense Initiative, the Secretary of Defense shall—

(1) seek to maximize the use of existing systems and technologies; and

(2) seek to promote joint use by the military departments of existing and future ballistic missile defense equipment (rather than each military department developing its own systems that would largely overlap in their capabilities).

The Secretaries of the military departments shall seek the maximum integration and compatibility of their ballistic missile defense systems as well as of the respective roles and missions of those systems.

(b) TMD MASTER PLAN.—The Secretary of Defense shall submit to Congress a report (which shall constitute the TMD master plan) containing a thorough and complete analysis of the future of theater missile defense programs. The report shall include the following:

(1) A description of the mission and scope of Theater Missile Defense.

(2) A description of the role of each of the Armed Forces in Theater Missile Defense.

(3) A description of how those roles interact and complement each other.

(4) An evaluation of the cost and relative effectiveness of each interceptor and sensor under development as part of a Theater Missile Defense system by the Ballistic Missile Defense Organization.

(5) A detailed acquisition strategy which includes an analysis and comparison of the projected acquisition and life-cycle costs of each Theater Missile Defense system intended for production (shown separately for research, development, test, and evaluation, for procurement, for operation and maintenance, and for personnel costs for each system).

(6) Specification of the baseline production rate for each year of the program through completion of procurement.

(7) An estimate of the unit cost and capabilities of each system.

(8) A description of plans for theater and tactical missile defense doctrine, training, tactics, and force structure.

(c) DESCRIPTION OF TESTING PROGRAM.—The Secretary of Defense shall include in the report under subsection (b)—

(1) a description of the current and projected testing program for Theater Missile Defense systems and major components; and

(2) an evaluation of the adequacy of the testing program to simulate conditions similar to those the systems and components would actually be expected to encounter if and when deployed (such as the ability to track and engage multiple targets with multiple interceptors, to discriminate targets from decoys and other incoming objects, and to be employed in a shoot-look-shoot firing mode).

(d) RELATIONSHIP TO ARMS CONTROL TREATIES.—The Secretary shall include in the report under subsection (b) a statement of how production and deployment of any projected Theater Missile Defense program will conform to all relevant arms control agreements. The report shall describe any potential noncompliance with any such agreement, when such noncompliance is expected to occur, and whether provisions need to be renegotiated within that agreement to address future contingencies.

(e) SUBMISSION OF REPORT.—The report required by subsection (b) shall be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

(f) OBJECTIVES OF PLAN.—In preparing the master plan, the Secretary shall—

(1) seek to maximize the use of existing technologies (such as SM–2, AEGIS, Patriot, and THAAD) rather than develop new systems;

(2) seek to maximize integration and compatibility among the systems, roles, and missions of the military departments; and

(3) seek to promote cross-service use of existing equipment (such as development of Army equipment for the Marine Corps or ground utilization of an air or sea system).

(g) REVIEW AND REPORT ON DEPLOYMENT OF BALLISTIC MISSILE DEFENSES.—(1) The Secretary of Defense shall conduct an intensive and extensive review of opportunities to streamline the weapon systems acquisition process applicable to the development, testing, and deployment of theater ballistic missile defenses with the objective of reducing the cost of deployment and accelerating

the schedule for deployment without significantly increasing programmatic risk or concurrency.

(2) In conducting the review, the Secretary shall obtain recommendations and advice from—

(A) the Defense Science Board;

(B) the faculty of the Industrial College of the Armed Forces; and

(C) federally funded research and development centers supporting the Office of the Secretary of Defense.

(3) Not later than May 1, 1994, the Secretary shall submit to the congressional defense committees a report on the Secretary's findings resulting from the review under paragraph (1), together with any recommendations of the Secretary for legislation. The Secretary shall submit the report in unclassified form, but may submit a classified version of the report if necessary to clarify any of the information in the findings or recommendations or any related information. The report may be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

SEC. 236. LIMITED DEFENSE SYSTEM DEVELOPMENT PLAN.

(a) REQUIREMENT FOR REPORT.—(1) The Secretary of Defense shall submit to the congressional defense committees a report on the development plan for a Limited Defense System covering the period of fiscal years 1994 through 1999.

(2) The report under paragraph (1) shall be submitted not later than May 30, 1994, and may be included in the next annual report on ballistic missile defenses submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

(b) ISSUES TO BE ADDRESSED IN REPORT.—The report under subsection (a) shall include discussion of the following matters:

(1) The proposed Limited Defense System architecture.

(2) The systems and components to be developed to implement that architecture.

(3) The extent to which those systems and components can be developed during the period referred to in subsection (a), assuming annual funding for the Limited Defense System averaging $600,000,000 per year.

(4) The additional funding required and the additional time required after fiscal year 1999 in order for initial deployment of a limited, ABM-Treaty-compliant capability at a single site to be implemented.

(5) The variations in both required funding and required time after fiscal year 1999 for the same initial deployment to be implemented—

(A) if funding for a Limited Defense System during fiscal years 1995 through 1999 averages $750,000,000 per year; and

(B) if funding for a Limited Defense System during fiscal years 1995 through 1999 averages $450,000,000 per year.

(6) The extent to which missile defense technologies and components that are developed for Theater Missile Defense systems to be deployed before fiscal year 2000 can reduce the

development costs and lead-times for development and deployment of a Limited Defense System.

(7) The extent to which acquisition streamlining can be applied to the development of a Limited Defense System.

(8) The extent to which the testing and simulation infrastructure, the level of engineering and technical support, the extensive reliance on studies and analyses by contractors, and the substantial use of outside contractors for systems engineering and technical analysis which the Ballistic Missile Defense Organization has inherited from the Strategic Defense Initiative Organization can be reduced given the re-evaluation of the Ballistic Missile Defense program that has emerged from the Bottom-Up Review of the Secretary of Defense which was conducted during 1993.

(9) Such other matters as the Secretary considers important.

SEC. 237. THEATER AND LIMITED DEFENSE SYSTEM TESTING.

(a) TESTING OF THEATER MISSILE DEFENSE INTERCEPTORS.—(1) The Secretary of Defense may not approve a theater missile defense interceptor program proceeding beyond the low-rate initial production acquisition stage until the Secretary certifies to the congressional defense committees that such program has successfully completed initial operational test and evaluation.

(2) In order to be certified under paragraph (1) as having been successfully completed, the initial operational test and evaluation conducted with respect to an interceptors program must have included flight tests—

(A) that were conducted with multiple interceptors and multiple targets in the presence of realistic countermeasures; and

(B) the results of which demonstrate the achievement by the interceptors of the baseline performance thresholds.

(3) For purposes of this subsection, the baseline performance thresholds with respect to a program are the weapons systems performance thresholds specified in the baseline description for the system established (pursuant to section 2435(a)(1) of title 10, United States Code) before the program entered the engineering and manufacturing development stage.

(4) The number of flight tests described in paragraph (2) that are required in order to make the certification under paragraph (1) shall be a number determined by the Secretary of Defense to be sufficient for the purposes of this section.

(5) The Secretary may augment live-fire testing to demonstrate weapons system performance goals for purposes of the certification under paragraph (1) through the use of modeling and simulation that is validated by ground and flight testing.

(b) ADVANCE REVIEW AND APPROVAL OF PROPOSED DEVELOPMENTAL TESTS OF LIMITED DEFENSE SYSTEM PROGRAM PROJECTS.—A developmental test may not be conducted under the Limited Defense System program element of the Ballistic Missile Defense Program until the Secretary of Defense reviews and approves (or approves with changes) the test plan for such developmental test.

(c) INDEPENDENT MONITORING OF TESTS.—(1) The Secretary shall provide for monitoring of the implementation of each test plan referred to in subsection (b) by a group composed of persons who—

(A) by reason of education, training, or experience are qualified to monitor the testing covered by the plan; and

(B) are not assigned or detailed to, or otherwise performing duties of, the Ballistic Missile Defense Organization and are otherwise independent of such organization.

(2) The monitoring group shall submit to the Secretary its analysis of, and conclusions regarding, the conduct and results of each test monitored by the group.

SEC. 238. ARROW TACTICAL ANTI-MISSILE PROGRAM.

(a) ENDORSEMENT OF COOPERATIVE RESEARCH AND DEVELOPMENT.—Congress reiterates its endorsement (previously stated in section 225(a)(5) of Public Law 101–510 (104 Stat. 1515) and section 241(a) of Public Law 102–190 (105 Stat. 1326)) of a continuing program of cooperative research and development, jointly funded by the United States and Israel, on the Arrow Tactical Anti-Missile program.

(b) PROGRAM GOAL.—The goal of the cooperative program is to demonstrate the feasibility and practicality of the Arrow system and to permit the government of Israel to make a decision on its own initiative regarding deployment of that system without financial participation by the United States beyond the research and development stage.

(c) ARROW CONTINUING EXPERIMENTS.—The Secretary of Defense, from amounts appropriated to the Department of Defense pursuant to section 201 for Defense-wide activities and available for the Ballistic Missile Defense Organization, shall fund the United States contribution to the fiscal year 1994 Arrow Continuing Experiments program in an amount not to exceed $56,400,000.

(d) ARROW DEPLOYABILITY INITIATIVE.—(1) Subject to paragraph (2), the Secretary of Defense may obligate funds appropriated pursuant to section 201 in an amount not to exceed $25,000,000 for the purpose of research and development of technologies associated with deploying the Arrow missile in the future (including technologies associated with battle management, lethality, system integration, and test bed systems).

(2) Funds may not be obligated for the purpose stated in paragraph (1) (other than as required to satisfy the conditions set forth in this paragraph) unless the President certifies to Congress that—

(A) the United States and the government of Israel have entered into an agreement governing the conduct and funding of research and development projects for the purpose stated in paragraph (1);

(B) each project in which the United States will join under that agreement (i) will have a benefit for the United States, and (ii) has not been barred by other congressional direction;

(C) the Arrow missile has successfully completed a flight test in which it intercepted a target missile under realistic test conditions; and

(D) the government of Israel is continuing, in accordance with its previous public commitments, to adhere to export controls pursuant to the Guidelines and Annex of the Missile Technology Control Regime.

(e) SENSE OF CONGRESS ON EXPEDITING TEST PROGRAM.—It is the sense of Congress that, in order to expedite the test program for the Arrow missile, the United States should seek to initiate with the government of Israel discussions on the agreement referred to in subsection (d)(2)(A) without waiting for the condition specified in subsection (d)(2)(C) to be met first.

SEC. 239. REPORT ON ARROW TACTICAL ANTI-MISSILE PROGRAM.

(a) REPORT REQUIRED.—Not later than April 1, 1994, the Secretary of Defense shall submit to the congressional defense committees a report on the Arrow Tactical Anti-Missile program. The Secretary shall design the report to provide those committees with the information they need in order to perform their oversight function. The Secretary shall obtain the information for the report from actual program data to which the United States Government has access, to the extent possible, or, if necessary, from the best estimates available to the United States Government.

(b) CONTENT OF REPORT.—The report shall include (at a minimum) the following:

(1) The development and procurement schedules for the program.

(2) The estimated annual and total cost of the program.

(3) The estimated total cost to the United States of involvement in the program, including funding provided through foreign military sales financing under the Arms Export Control Act.

(4) A detailed description of the contract types and cost estimating data for the program.

(5) An assessment of the performance of the Arrow interceptor and the Arrow system.

(6) An evaluation of the development and production risks under the program.

(7) Alternatives to the Arrow interceptor and Arrow system for meeting the tactical ballistic missile defense needs of Israel, including providing Israel with an existing or planned United States weapon system.

(8) For each such alternative—

(A) an assessment of the cost effectiveness of undertaking the alternative;

(B) the technology transfer implications; and

(C) the weapon proliferation implications.

(c) FORM OF REPORT.—The Secretary shall submit the report in classified and unclassified versions.

(d) CONSTRUCTION OF SECTION.—Nothing in this section shall be construed to endorse United States participation in any aspect of the Arrow program beyond the research and development programs authorized by law.

* * * * * * *

SEC. 242. [10 U.S.C. 2431 note] COOPERATION OF UNITED STATES ALLIES ON DEVELOPMENT OF TACTICAL AND THEATER MISSILE DEFENSES.

[Repealed by section 253(7) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).]

SEC. 243. [10 U.S.C. 2431 note] TRANSFER OF FOLLOW-ON TECHNOLOGY PROGRAMS.

(a) MANAGEMENT RESPONSIBILITY.—Except as provided in subsection (b), the Secretary of Defense shall provide that management and budget responsibility for research and development of any program, project, or activity to develop far-term follow-on technology relating to ballistic missile defense shall be provided through the Defense Advanced Research Projects Agency or the appropriate military department.

(b) WAIVER AUTHORITY.—The Secretary may waive the provisions of subsection (a) in the case of a particular program, project, or activity if the Secretary certifies to the congressional defense committees that it is in the national security interest of the United States to provide management and budget responsibility for that program, project, or activity through the Ballistic Missile Defense Organization.

(c) REPORT REQUIRED.—As a part of the report required by section 231(e), the Secretary shall submit to the congressional defense committees a report identifying—

(1) each program, project, and activity with respect to which the Secretary has transferred management and budget responsibility from the Ballistic Missile Defense Organization in accordance with subsection (a);

(2) the agency or military department to which each such transfer was made; and

(3) the date on which each such transfer was made.

(d) DEFINITION.—For the purposes of this section, the term "far-term follow-on technology" means a technology that is not incorporated into a ballistic missile defense architecture and is not likely to be incorporated within 15 years into a weapon system for ballistic missile defense.

(e) CONFORMING AMENDMENT.—Section 234 of the Missile Defense Act of 1991 is repealed.

---

k. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle C—Missile Defense Programs

SEC. 231. [10 U.S.C. 2431 note] THEATER MISSILE DEFENSE INITIATIVE.

(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 De-

fense (including all programs, projects, and activities formerly associated with the Theater Missile Defense program element of the Strategic Defense Initiative) shall be carried out under the Theater Missile Defense Initiative.

(b) FUNDING FOR FISCAL YEAR 1993.—Of the amounts appropriated pursuant to section 201 or otherwise made available to the Department of Defense for research, development, test, and evaluation for fiscal year 1993, not more than $935,000,000 may be obligated for activities of the Theater Missile Defense Initiative, of which not less than $90,000,000 shall be made available for exploration of promising concepts for naval theater missile defense.

(c) REPORT.—When the President's budget for fiscal year 1994 is submitted to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report—

(1) setting forth the proposed allocation by the Secretary of funds for the Theater Missile Defense Initiative for fiscal year 1994, shown for each program, project, and activity;

(2) describing an updated master plan for the Theater Missile Defense Initiative that includes (A) a detailed consideration of plans for theater and tactical missile defense doctrine, training, tactics, and force structure, and (B) a detailed acquisition strategy which includes a consideration of acquisition and life-cycle costs through the year 2005 for the programs, projects, and activities associated with the Theater Missile Defense Initiative;

(3) assessing the possible near-term contribution and cost-effectiveness for theater missile defense of exoatmospheric capabilities, to include at a minimum a consideration of—

(A) the use of the Navy's Standard missile combined with a kick stage rocket motor and lightweight exoatmospheric projectile (LEAP); and

(B) the use of the Patriot missile combined with a kick stage rocket motor and LEAP.

(d) EFFECTIVE DATE.—The provisions of subsections (a), (b), and (c) shall be implemented not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992].

SEC. 232. STRATEGIC DEFENSE INITIATIVE FUNDING.

(a) TOTAL AMOUNT.—Of the amounts appropriated pursuant to section 201 or otherwise made available to the Department of Defense for research, development, test, and evaluation for fiscal year 1993, not more than $3,039,800,000 may be obligated for the Strategic Defense Initiative.

(b) SPECIFIC AMOUNTS FOR THE PROGRAM ELEMENTS.—Of the amount described in subsection (a)—

(1) not more than $2,039,800,000 shall be available for programs, projects, and activities within the Limited Defense System program element;

(2) not more than $300,000,000 shall be available for programs, projects, and activities within the Space-Based Interceptors program element;

(3) not more than $300,000,000 shall be available for programs, projects, and activities within the Other Follow-On Systems program element; and

(4) not more than $400,000,000 shall be available for programs, projects, and activities within the Research and Support Activities program element.

(d)[1] CONSTRUCTION OF AUTHORITY IN RELATION TO USER OPERATIONAL EVALUATION SYSTEM.—Nothing in this Act shall be construed to authorize the exercise of any option to fabricate or field elements of a User Operational Evaluation System at the initial anti-ballistic missile defense site.

SEC. 233. REPORTING REQUIREMENTS AND TRANSFER AUTHORITIES FOR TMDI AND SDI.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to the congressional defense committees a report on the allocation of funds appropriated for the Theater Missile Defense Initiative and the Strategic Defense Initiative for fiscal year 1993. The report shall specify the amount of such funds allocated for each program, project, and activity of the Theater Missile Defense Initiative and the Strategic Defense Initiative and shall list each Strategic Defense Initiative program, project, and activity under the appropriate program element and list each Theater Missile Defense Initiative program, project, and activity.

(b) TRANSFER AUTHORITIES.—

(1) IN GENERAL.—Before the submission of the report required under subsection (a) and notwithstanding the limitations set forth in sections 231(b) and 232(b) of this Act, the Secretary of Defense may transfer funds among the Strategic Defense Initiative program elements named in section 232(b) of this Act and from such elements to the Theater Missile Defense Initiative.

(2) LIMITATION.—The total amount that may be transferred to or from any program element named in section 232(b)—

(A) may not exceed 10 percent of the amount provided in such subsection for the program element from which the transfer is made; and

(B) may not result in an increase of more than 10 percent of the amount provided in section 232(b) for the Strategic Defense Initiative program element to which the transfer is made and may not result in an increase of more than 10 percent of the amount provided in section 231(b) for the Theater Missile Defense Initiative.

(3) RESTRICTION.—Transfer authority under paragraph (1) may not be used for a decrease in funds identified in section 231(b) for the Theater Missile Defense Initiative.

(4) MERGER AND AVAILABILITY.—Amounts transferred pursuant to paragraph (1) shall be merged with and be available for the same purposes as the amounts to which transferred.

[1] So in law. Enacted without a subsection (c) by Public Law 102–484 (106 Stat. 2354).

SEC. 234. REVISION OF THE MISSILE DEFENSE ACT OF 1991.

[Section 234 consisted of amendments to the Missile Defense Act of 1991, which was repealed by section 238 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).]

SEC. 235. DEVELOPMENT AND TESTING OF ANTI-BALLISTIC MISSILE SYSTEMS OR COMPONENTS.

(a) USE OF FUNDS.—

(1) LIMITATION.—Funds appropriated to the Department of Defense for fiscal year 1993, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1993 or for any fiscal year before 1993, may not be obligated or expended—

(A) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the development and testing described in the July 1992 SDIO Report; or

(B) for the acquisition of any material or equipment (including any long lead materials, components, piece parts, test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or components, except for material or equipment required for development or testing consistent with the development and testing described in the July 1992 SDIO Report.

(2) EXCEPTION.—The limitation under paragraph (1) shall not apply to funds transferred to or for the use of the Strategic Defense Initiative for fiscal year 1993 if the transfer is made in accordance with section 1001 of this Act.

(b) DEFINITION.—In this section, the term "July 1992 SDIO Report" means the report entitled, "1992 Report to Congress on the Strategic Defense Initiative," prepared by the Strategic Defense Initiative Organization and submitted to certain committees of the Senate and House of Representatives by the Secretary of Defense pursuant to section 224 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1398; 10 U.S.C. 2431).

SEC. 236. LIMITATION REGARDING SUPPORT SERVICES CONTRACTS OF THE STRATEGIC DEFENSE INITIATIVE ORGANIZATION.

(a) LIMITATION.—Of the amounts that are appropriated to the Department of Defense for fiscal year 1993 pursuant to the authorizations of appropriations contained in this Act and are made available for the Strategic Defense Initiative Organization, not more than $135,000,000 may be expended for the procurement of support services.

(b) DEFINITION.—For purposes of subsection (a), the term "support services" means any of the following:

(1) Professional, administrative, and management support services.

(2) Special studies and analyses.

(3) Services contracted for under section 3109 of title 5, United States Code.

l. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

PART C—STRATEGIC DEFENSE INITIATIVE

SEC. 221. [10 U.S.C. 2431 note] STRATEGIC DEFENSE INITIATIVE PROGRAM STRUCTURE AND LIMITATIONS ON SPENDING

(a) PROGRAM ELEMENTS.—(1) The following program elements shall be the exclusive program elements for the Strategic Defense Initiative:

(A) Phase I Defenses.
(B) Limited Protection Systems.
(C) Theater and ATBM Defenses.
(D) Follow-On Systems.
(E) Research and Support Activities.

(2) The program elements in paragraph (1) shall be the only program elements used in the program and budget information concerning the Strategic Defense Initiative submitted to Congress by the Secretary of Defense in support of the budget submitted to Congress by the President under section 1105 of title 31, United States Code, for any fiscal year after fiscal year 1991.

(b) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION OBJECTIVES.—

(1) PHASE I DEFENSES.—The Phase I Defenses program element shall include programs, projects, and activities which have as a primary objective the development of systems, components, and architectures for a strategic defense system capable of providing low to moderate defensive capabilities against a large-scale ballistic missile attack against the United States. Such activities may include those necessary to develop systems, components, and architectures capable of providing an early deployment option against limited attacks, including accidental, unauthorized, or deliberate launch of a small number of ballistic missiles.

(2) LIMITED PROTECTION SYSTEMS.—The Limited Protection Systems program element shall include programs, projects, and activities which have as a primary objective the development of systems and components which, if deployed as a limited defense, would not be in violation of the 1972 ABM Treaty. For purposes of planning, evaluation, design, and effectiveness studies, such programs, projects, and activities may take into consideration both the current numerical limitations of the 1972 ABM Treaty and modest changes to those numerical limitations.

(3) THEATER AND ATBM DEFENSES.—The Theater and ATBM Defenses program element shall include programs, projects, and activities which have as a primary objective—

(A) the development of deployable and rapidly relocatable anti-tactical ballistic missile (ATBM) defenses

for forward deployed and expeditionary United States armed forces, and

(B) cooperation with friendly and allied nations in the development of theater defenses against tactical ballistic missiles.

(4) FOLLOW-ON SYSTEMS.—The Follow-On Systems program element shall include programs, projects, and activities which have as a primary objective the development of technologies capable of supporting systems, components, and architectures that could produce highly effective defenses for deployment after the beginning of the twenty-first century.

(5) RESEARCH AND SUPPORT ACTIVITIES.—The Research and Support Activities program element shall include programs, projects, and activities which have as a primary objective—

(A) the provision of basic research and technical, engineering, and managerial support to the programs, projects, and activities within the program elements in paragraphs (1) through (4);

(B) innovative science and technology projects;

(C) the provision of test and evaluation services; and

(D) program management.

(c) FUNDING LIMITATIONS.—[Omitted]

(d) DEFINITION.—In this section, the term "1972 ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitations of Anti-Ballistic Missiles, signed at Moscow on May 26, 1972.

---

m. National Defense Authorization Act for Fiscal Years 1988 and 1989

(Public Law 100–180; approved Dec. 4, 1987)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

PART C—STRATEGIC DEFENSE INITIATIVE

Subpart 1—SDI Funding and Program Limitations and Requirements

* * * * * * *

SEC. 222. [10 U.S.C. 2431 note] PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES

(a) SDI CONTRACTS WITH FOREIGN ENTITIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with a foreign government or a foreign firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative program.

(b) TEMPORARY SUSPENSION OF PROHIBITION UPON CERTIFICATION OF THE SECRETARY OF DEFENSE.—The prohibition in subsection (a) shall not apply to a contract in any fiscal year if the Secretary of Defense certifies to Congress in writing at any time dur-

ing such fiscal year that the research, development, testing, or evaluation to be performed under such contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the research, development, testing, or evaluation would be performed by a foreign firm.

(c) EXCEPTIONS FOR CERTAIN CONTRACTS.—The prohibition in subsection (a) shall not apply to a contract awarded to a foreign government or foreign firm if—

(1) the contract is to be performed within the United States;

(2) the contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems; or

(3) that foreign government or foreign firm agrees to share a substantial portion of the total contract cost.

(d) DEFINITIONS.—In this section:

(1) The term "foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(2) The term "United States firm" means a business entity other than a foreign firm.

(e) TRANSITION.—The prohibition in subsection (a) shall not apply to a contract entered into before the date of the enactment of this Act.

SEC. 223. [10 U.S.C. 2431 note] LIMITATION ON TRANSFER OF CERTAIN MILITARY TECHNOLOGY TO INDEPENDENT STATES OR THE FORMER SOVIET UNION.

Military technology developed with funds appropriated or otherwise made available for the Ballistic Missile Defense Program may not be transferred (or made available for transfer) to Russia or any other independent State of the former Soviet Union by the United States (or with the consent of the United States) unless the President determines and certifies to the Congress at least 15 days prior to any such transfer, that such transfer is in the national interest of the United States and is to be made for the purpose of maintaining peace.

SEC. 224. [10 U.S.C. 2431 note] SDI ARCHITECTURE TO REQUIRE HUMAN DECISION MAKING

No agency of the Federal Government may plan for, fund, or otherwise support the development of command and control systems for strategic defense in the boost or post-boost phase against ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative human decision at an appropriate level of authority.

* * * * * * *

SEC. 226 [10 U.S.C. 2431 note] PROHIBITION ON DEPLOYMENT OF ANTI-BALLISTIC MISSILE SYSTEM UNLESS AUTHORIZED BY LAW

[Repealed by section 253(3) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).**]**

SEC. 227. [10 U.S.C. 2431 note] ESTABLISHMENT OF A FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER TO SUPPORT THE STRATEGIC DEFENSE INITIATIVE PROGRAM

(a) FINDINGS.—The Congress makes the following findings:

(1) The Department of Defense requires technical support for issues of system integration related to the Strategic Defense Initiative program.

(2) The Strategic Defense Initiative Organization, after assessing alternative types of organizations for the provision of such technical support to the Strategic Defense Initiative program (including Government organizations, profit and nonprofit entities (including existing federally funded research and development centers), a new division within an existing federally funded research and development center, a new federally funded research and development center, colleges and universities, and private nonprofit laboratories), determined that a new federally funded research and development center (hereinafter in this section referred to as an "FFRDC") would be the type of organization most appropriate for the provision of such technical support to the Strategic Defense Initiative program.

(3) In providing such technical support to the SDI program, the new FFRDC should provide critical evaluation and rigorous and objective analysis of technologies, systems, and architectures that are candidates for use in the SDI program.

(4) Competitive selection of a contractor to establish and operate such an FFRDC to support the Strategic Defense Initiative program is one way to enhance the prospects for independent and objective evaluation of system integration issues within the Strategic Defense Initiative program.

(b) AUTHORITY TO CONTRACT FOR FFRDC.—The Secretary of Defense, using funds appropriated to the Department of Defense for the Strategic Defense Initiative program, may enter into a contract to provide for the establishment and operation of a federally funded research and development center to provide independent and objective technical support to the Strategic Defense Initiative program. Such a contract may not be awarded before October 1, 1989.

(c) CONTRACT AWARD REQUIREMENTS.—(1) A contract under subsection (b) shall be awarded using competitive procedures which emphasize cost considerations.

(2) The Secretary of Defense shall solicit proposals for such contract from existing federally funded research and development centers, from universities, from commercial entities, and from appropriate new organizations and shall make maximum efforts to obtain more than one proposal for such contract.

(3) The Secretary shall submit the three best contract proposals (as determined by the Secretary), together with a copy of the proposed sponsoring agreement for the new FFRDC, for review by three persons designated by the Defense Science Board from a list of six or more persons submitted by the National Academy of Sciences. The persons performing the review—

(A) shall evaluate the extent to which each proposal and the proposed sponsoring agreement would foster competent

and objective technical advice for the Strategic Defense Initiative Program; and

(B) shall report their evaluation of each such proposal and of the proposed sponsoring agreement to the Secretary.

(4) Before awarding a contract under subsection (b), and not sooner than March 30, 1989, the Secretary shall submit to Congress—

(A) a copy of the proposed final contract; and

(B) a copy of the proposed final sponsoring agreement relating to the operation of the new FFRDC.

(5)(A) The Secretary shall then withhold the award of such contract and the approval of such sponsoring agreement for a period of at least 30 days of continuous session of Congress beginning on the day after the date on which Congress receives the copies referred to in paragraph (4).

(B) For purposes of subparagraph (a), the continuity of a session of Congress is broken only by an adjournment sine die at the end of the second regular session of that Congress. In computing the 30-day period for such purposes, days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded.

(d) REQUIREMENTS APPLICABLE TO FFRDC.—The Secretary of Defense shall—

(1) require that the contract referred to in subsection (b) include a provision stating that no officer or employee of the Department of Defense shall have the authority to veto the employment of any person selected to serve as an officer or employee of the new FFRDC;

(2) require that at least 5 percent of the total amount of funds available for the new FFRDC shall be set aside for independent research to be performed by the staff of the new FFRDC under the direction of the chief executive officer of the new FFRDC;

(3) impose a limitation on the compensation payable to each senior executive of the new FFRDC for services performed for the new FFRDC so that such compensation shall be comparable to the amount of compensation payable to senior executives of comparable federally funded research and development centers for similar services;

(4) require that the new FFRDC publicly disclose the salary of its chief executive officer;

(5) prohibit current or former members of the Strategic Defense Initiative Advisory Committee from serving as members of the Board of Trustees of the FFRDC if such members constitute 10 or more percent of the Board of Trustees or from serving as officers of the new FFRDC;

(6) require that the contract referred to in subsection (b) include a provision prohibiting members of such Board of Trustees from serving as officers of the new FFRDC, except that a Board member may serve as the President of the new FFRDC if the Board is comprised of 10 or more members;

(7) require that the contract referred to in subsection (b) include a provision prohibiting the new FFRDC from employing any person who, as a Federal employee or member of the

Armed Forces, served in the Strategic Defense Initiative Organization within two years before the date on which such person is to be employed by the new FFRDC; and

(8) require that any contract referred to in subsection (b) require that the Board of Trustees of the new FFRDC be comprised of individuals who represent a reasonable cross-section of views on the engineering and scientific issues associated with the Strategic Defense Initiative Program.

(e) FUNDING.—The Secretary of Defense shall provide that all funds for the new FFRDC within the Department of Defense budget for any fiscal year shall be separately identified and set forth in the budget presentation materials submitted to Congress for that fiscal year.

(f) SUNSET PROVISION.—No Federal funds may be provided to the new FFRDC after the end of the five-year period beginning on the date of the award of the first contract awarded to the FFRDC under this section.

2. PROVISIONS RELATED TO CHEMICAL AND BIOLOGICAL WEAPONS

a. Destruction of Existing Stockpile of Lethal Chemical Agents and Munitions

Section 1412 of the Department of Defense Authorization Act, 1986

(Public Law 99–145; approved Nov. 8, 1985)

SEC. 1412. [50 U.S.C. 1521] DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") shall, in accordance with the provisions of this section, carry out the destruction of the United States' stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(b) DATE FOR COMPLETION.—(1) Except as provided by paragraphs (2) and (3), the destruction of such stockpile shall be completed by the stockpile elimination deadline.

(2) If a treaty banning the possession of chemical agents and munitions is ratified by the United States, the date for completing the destruction of the United States' stockpile of such agents and munitions shall be the date established by such treaty.

(3)(A) In the event of a declaration of war by the Congress or of a national emergency by the President or the Congress or if the Secretary of Defense determines that there has been a significant delay in the acquisition of an adequate number of binary chemical weapons to meet the requirements of the Armed Forces (as defined by the Joint Chiefs of Staff as of September 30, 1985), the Secretary may defer, beyond the stockpile elimination deadline, the destruction of not more than ten percent of the stockpile described in subsection (a)(1).

(B) The Secretary shall transmit written notice to the Congress of any deferral made under subparagraph (A) not later than the earlier of (A) 30 days after the date on which the decision to defer is made, or (B) 30 days before the stockpile elimination deadline.

(4) If the Secretary determines at any time that there will be a delay in meeting the requirement in paragraph (1) for the completion of the destruction of chemical weapons by the stockpile elimination deadline, the Secretary shall immediately notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that projected delay.

(5) For purposes of this section, the term "stockpile elimination deadline" means December 31, 2004.

(c) ENVIRONMENTAL PROTECTION AND USE OF FACILITIES.—(1) In carrying out the requirement of subsection (a), the Secretary shall provide for—

(A) maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions referred to in subsection (a); and

(B) adequate and safe facilities designed solely for the destruction of lethal chemical agents and munitions.

(2) Facilities constructed to carry out this section shall, when no longer needed for the purposes for which they were constructed, be disposed of in accordance with applicable laws and regulations and mutual agreements between the Secretary of the Army and the Governor of the State in which the facility is located.

(3)(A) Facilities constructed to carry out this section may not be used for a purpose other than the destruction of the stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(B) The prohibition in subparagraph (A) shall not apply with respect to items designated by the Secretary of Defense as lethal chemical agents, munitions, or related materials after November 8, 1985, if the State in which a destruction facility is located issues the appropriate permit or permits for the destruction of such items at the facility.

(4) In order to carry out subparagraph (A) of paragraph (1), the Secretary may make grants to State and local governments (either directly or through the Federal Emergency Management Agency) to assist those governments in carrying out functions relating to emergency preparedness and response in connection with the disposal of the lethal chemical agents and munitions referred to in subsection (a). Funds available to the Department of Defense for the purpose of carrying out this section may be used for such grants. Additionally, the Secretary may provide funds through cooperative agreements with State and local governments for the purpose of assisting them in processing, approving, and overseeing permits and licenses necessary for the construction and operation of facilities to carry out this section. The Secretary shall ensure that funds provided through such a cooperative agreement are used only for the purpose set forth in the preceding sentence.

(5)(A) In coordination with the Secretary of the Army and in accordance with agreements between the Secretary of the Army and the Director of the Federal Emergency Management Agency, the Director shall carry out a program to provide assistance to State and local governments in developing capabilities to respond to emergencies involving risks to the public health or safety within their jurisdictions that are identified by the Secretary as being risks resulting from—

(i) the storage of lethal chemical agents and munitions referred to in subsection (a) at military installations in the continental United States; or

(ii) the destruction of such agents and munitions at facilities referred to in paragraph (1)(B).

(B) No assistance may be provided under this paragraph after the completion of the destruction of the United States' stockpile of lethal chemical agents and munitions.

(C) Not later than December 15 of each year, the Director shall transmit a report to Congress on the activities carried out under this paragraph during the fiscal year preceding the fiscal year in which the report is submitted.

(d) PLAN.—(1) The Secretary shall develop a comprehensive plan to carry out this section.

(2) In developing such plan, the Secretary shall consult with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency.

(3) The Secretary shall transmit a copy of such plan to the Congress by March 15, 1986.

(4) Such plan shall provide—

(A) an evaluation of the comparison of onsite destruction, regional destruction centers, and a national destruction site both inside and outside of the United States;

(B) for technological advances in techniques used to destroy chemical munitions;

(C) for the maintenance of a permanent, written record of the destruction of lethal chemical agents and munitions carried out under this section; and

(D) a description of—

(i) the methods and facilities to be used in the destruction of agents and munitions under this section;

(ii) the schedule for carrying out this section; and

(iii) the management organization established under subsection (e).

(e) MANAGEMENT ORGANIZATION.—(1) In carrying out this section, the Secretary shall provide for the establishment, not later than May 1, 1986, of a management organization within the Department of the Army.

(2) Such organization shall be responsible for management of the destruction of agents and munitions under this section.

(3) The Secretary shall designate a general officer or civilian equivalent as the director of the management organization established under paragraph (1). Such officer shall have—

(A) experience in the acquisition, storage, and destruction of chemical agents and munitions;

(B) training in chemical warfare defense operations; and

(C) outstanding qualifications regarding safety in handling chemical agents and munitions.

(f) IDENTIFICATION OF FUNDS.—(1) Funds for carrying out this section, including funds for military construction projects necessary to carry out this section, shall be set forth in the budget of the Department of Defense for any fiscal year as a separate account. Such funds shall not be included in the budget accounts for any military department.

(2) Amounts appropriated to the Secretary for the purpose of carrying out subsection (c)(5) shall be promptly made available to the Director of the Federal Emergency Management Agency.

(g) PERIODIC REPORTS.—(1) Except as provided by paragraph (3), the Secretary shall transmit, by December 15 of each year, a

report to the Congress on the activities carried out under this section during the fiscal year ending on September 30 of the calendar year in which the report is to be made.

(2) Each annual report shall include the following:

(A) A site-by-site description of the construction, equipment, operation, and dismantling of facilities (during the fiscal year for which the report is made) used to carry out the destruction of agents and munitions under this section, including any accidents or other unplanned occurrences associated with such construction and operation.

(B) A site-by-site description of actions taken to assist State and local governments (either directly or through the Federal Emergency Management Agency) in carrying out functions relating to emergency preparedness and response in accordance with subsection (c)(4).

(C) An accounting of all funds expended (during such fiscal year) for activities carried out under this section, with a separate accounting for amounts expended for—

(i) the construction of and equipment for facilities used for the destruction of agents and munitions;

(ii) the operation of such facilities;

(iii) the dismantling or other closure of such facilities;

(iv) research and development;

(v) program management;

(vi) travel and associated travel costs for Citizens' Advisory Commissioners under section 172(g) of Public Law 102–484 (50 U.S.C. 1521 note); and

(vii) grants to State and local governments to assist those governments in carrying out functions relating to emergency preparedness and response in accordance with subsection (c)(3).

(D) An assessment of the safety status and the integrity of the stockpile of lethal chemical agents and munitions subject to this section, including—

(i) an estimate on how much longer that stockpile can continue to be stored safely;

(ii) a site-by-site assessment of the safety of those agents and munitions; and

(iii) a description of the steps taken (to the date of the report) to monitor the safety status of the stockpile and to mitigate any further deterioration of that status.

(3) The Secretary shall transmit the final report under paragraph (1) not later than 120 days following the completion of activities under this section.

(h) PROHIBITION ON ACQUIRING CERTAIN LETHAL CHEMICAL AGENTS AND MUNITIONS.—(1) Except as provided in paragraph (2), no agency of the Federal Government may, after November 8, 1985, develop or acquire lethal chemical agents or munitions other than binary chemical weapons.

(2)(A) The Secretary of Defense may acquire any chemical agent or munition at any time for purposes of intelligence analysis.

(B) Chemical agents and munitions may be acquired for research, development, test, and evaluation purposes at any time, but

only in quantities needed for such purposes and not in production quantities.

(i) REAFFIRMATION OF UNITED STATES POSITION ON FIRST USE OF CHEMICAL AGENTS AND MUNITIONS.—It is the sense of Congress that the President should publicly reaffirm the position of the United States as set out in the Geneva Protocol of 1925, which the United States ratified with reservations in 1975.

(j) DEFINITIONS.—For purposes of this section:

(1) The term "chemical agent and munition" means an agent or munition that, through its chemical properties, produces lethal or other demaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke and other obscuration materials.

(2) The term "lethal chemical agent and munition" means a chemical agent or munition that is designed to cause death, through its chemical properties, to human beings in field concentrations.

(3) The term "destruction" means, with respect to chemical munitions or agents—

(A) the demolishment of such munitions or agents by incineration or by any other means; or

(B) the dismantling or other disposal of such munitions or agents so as to make them useless for military purposes and harmless to human beings under normal circumstances.

(k) OPERATIONAL VERIFICATION.—(1) Until the Secretary of the Army successfully completes (through the prove-out work to be conducted at Johnston Atoll) operational verification of the technology to be used for the destruction of live chemical agents and munitions under this section, the Secretary may not conduct any activity for equipment prove out and systems test before live chemical agents are introduced at a facility (other than the Johnston Atoll facility) at which the destruction of chemical agent and munitions weapons is to take place under this section. The limitation in the preceding sentence shall not apply with respect to the Chemical Agent Munition Disposal System in Tooele, Utah.

(2) Upon the successful completion of the prove out of the equipment and facility at Johnston Atoll, 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 certifying that the prove out is completed.

(3) If the Secretary determines at any time that there will be a delay in meeting the deadline of December 31, 1990, scheduled by the Department of Defense for completion of the operational verification at Johnston Atoll referred to in paragraph (1), the Secretary shall immediately notify the Committees of that projected delay.

b. Chemical Weapon Demilitarization Provisions From Annual Defense Authorization and Appropriations Acts

---

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle F—Chemical Demilitarization

SEC. 151. PUEBLO CHEMICAL DEPOT CHEMICAL AGENT AND MUNITIONS DESTRUCTION TECHNOLOGIES.

(a) LIMITATION.—In determining the technologies to be used for the destruction of the stockpile of lethal chemical agents and munitions at Pueblo Chemical Depot, Colorado, whether under the assessment required by section 141(a) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 537; 50 U.S.C. 1521 note), the Assembled Chemical Weapons Assessment, or any other assessment, the Secretary of Defense may consider only the following technologies:

(1) Incineration.

(2) Any technologies demonstrated under the Assembled Chemical Weapons Assessment on or before May 1, 2000.

(b) ASSEMBLED CHEMICAL WEAPONS ASSESSMENT DEFINED.—As used in subsection (a), the term "Assembled Chemical Weapons Assessment" means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (as contained in section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

* * * * * * *

SEC. 153. PROHIBITION AGAINST DISPOSAL OF NON-STOCKPILE CHEMICAL WARFARE MATERIAL AT ANNISTON CHEMICAL STOCKPILE DISPOSAL FACILITY.

No funds authorized to be made available under this or any other Act may be used to facilitate the disposal using the chemical stockpile disposal facility at Anniston, Alabama, of any non-stockpile chemical warfare material that is not stored (as of the date of the enactment of this Act) at the Anniston Army Depot.

National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle E—Chemical Stockpile Destruction Program

SEC. 141. [10 U.S.C. 1521 note] DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) PROGRAM ASSESSMENT.—(1) The Secretary of Defense shall conduct an assessment of the current program for destruction of the United States' stockpile of chemical agents and munitions, including the Assembled Chemical Weapons Assessment, for the purpose of reducing significantly the cost of such program and ensuring completion of such program in accordance with the obligations of the United States under the Chemical Weapons Convention while maintaining maximum protection of the general public, the personnel involved in the demilitarization program, and the environment.

(2) Based on the results of the assessment conducted under paragraph (1), the Secretary may take those actions identified in the assessment that may be accomplished under existing law to achieve the purposes of such assessment and the chemical agents and munitions stockpile destruction program.

(3) Not later than March 1, 2000, the Secretary shall submit to Congress a report on—

(A) those actions taken, or planned to be taken, under paragraph (2); and

(B) any recommendations for additional legislation that may be required to achieve the purposes of the assessment conducted under paragraph (1) and of the chemical agents and munitions stockpile destruction program.

(b) CHANGES AND CLARIFICATIONS REGARDING PROGRAM.—[Omitted-Amendments]

(c) COMPTROLLER GENERAL ASSESSMENT AND REPORT.—(1) Not later than March 1, 2000, the Comptroller General of the United States shall review and assess the program for destruction of the United States stockpile of chemical agents and munitions and report the results of the assessment to the congressional defense committees.

(2) The assessment conducted under paragraph (1) shall include a review of the program execution and financial management of each of the elements of the program, including—

(A) the chemical stockpile disposal project;

(B) the nonstockpile chemical materiel project;

(C) the alternative technologies and approaches project;

(D) the chemical stockpile emergency preparedness program; and

(E) the assembled chemical weapons assessment program.

(d) DEFINITIONS.—As used in this section:

(1) The term "Assembled Chemical Weapons Assessment" means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

(2) The term "Chemical Weapons Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their

Destruction, ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.

SEC. 142. COMPTROLLER GENERAL REPORT ON ANTICIPATED EFFECTS OF PROPOSED CHANGES IN OPERATION OF STORAGE SITES FOR LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) REPORT REQUIRED.—Not later than March 31, 2000, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the proposal in the latest quadrennial defense review to reduce the Federal civilian workforce involved in the operation of the eight storage sites for lethal chemical agents and munitions in the continental United States and to convert to contractor operation of the storage sites. The workforce reductions addressed in the report shall include those that are to be effectuated by fiscal year 2002.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) For each site, a description of the assigned chemical storage, chemical demilitarization, and industrial missions.

(2) A description of the criteria and reporting systems applied to ensure that the storage sites and the workforce operating the storage sites have—

(A) the capabilities necessary to respond effectively to emergencies involving chemical accidents; and

(B) the industrial capabilities necessary to meet replenishment and surge requirements.

(3) The risks associated with the proposed workforce reductions and contractor performance, particularly regarding chemical accidents, incident response capabilities, community-wide emergency preparedness programs, and current or planned chemical demilitarization programs.

(4) The effects of the proposed workforce reductions and contractor performance on the capability to satisfy permit requirements regarding environmental protection that are applicable to the performance of current and future chemical demilitarization and industrial missions.

(5) The effects of the proposed workforce reductions and contractor performance on the capability to perform assigned industrial missions, particularly the materiel replenishment missions for chemical or biological defense or for chemical munitions.

(6) Recommendations for mitigating the risks and adverse effects identified in the report.

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 142. [50 U.S.C. 1521 note] ALTERNATIVE TECHNOLOGIES FOR DESTRUCTION OF ASSEMBLED CHEMICAL WEAPONS.

(a) PROGRAM MANAGEMENT.—The program manager for the Assembled Chemical Weapons Assessment shall continue to manage the development and testing (including demonstration and pilot-scale testing) of technologies for the destruction of lethal chemical munitions that are potential or demonstrated alternatives to the baseline incineration program. In performing such management, the program manager shall act independently of the program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition and Technology.

(b) POST-DEMONSTRATION ACTIVITIES.—(1) The program manager for the Assembled Chemical Weapons Assessment may carry out those activities necessary to ensure that an alternative technology for the destruction of lethal chemical munitions can be implemented immediately after—

(A) the technology has been demonstrated to be successful; and

(B) the Under Secretary of Defense for Acquisition and Technology has submitted a report on the demonstration to Congress that includes a decision to proceed with the pilot-scale facility phase for an alternative technology.

(2) To prepare for the immediate implementation of any such technology, the program manager may, during fiscal years 1998 and 1999, take the following actions:

(A) Establish program requirements.

(B) Prepare procurement documentation.

(C) Develop environmental documentation.

(D) Identify and prepare to meet public outreach and public participation requirements.

(E) Prepare to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999.

(c) INDEPENDENT EVALUATION.—The Under Secretary of Defense for Acquisition and Technology shall provide for an independent evaluation of the cost and schedule of the Assembled Chemical Weapons Assessment, which shall be performed and submitted to the Under Secretary not later than September 30, 1999. The evaluation shall be performed by a nongovernmental organization qualified to make such an evaluation.

(d) PILOT FACILITIES CONTRACTS.—(1) The Under Secretary of Defense for Acquisition and Technology shall determine whether to proceed with pilot-scale testing of a technology referred to in paragraph (2) in time to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999. If the Under Secretary determines to proceed with such testing, the Under Secretary shall (exercising the acquisition authority of the Secretary of Defense) so award a contract not later than such date.

(2) Paragraph (1) applies to an alternative technology for the destruction of lethal chemical munitions, other than incineration, that the Under Secretary—

(A) certifies in writing to Congress is—

(i) as safe and cost effective for disposing of assembled chemical munitions as is incineration of such munitions; and

(ii) is capable of completing the destruction of such munitions on or before the later of the date by which the destruction of the munitions would be completed if incineration were used or the deadline date for completing the destruction of the munitions under the Chemical Weapons Convention; and

(B) determines as satisfying the Federal and State environmental and safety laws that are applicable to the use of the technology and to the design, construction, and operation of a pilot facility for use of the technology.

(3) The Under Secretary shall consult with the National Research Council in making determinations and certifications for the purpose of paragraph (2).

(4) In this subsection, the term "Chemical Weapons Convention" means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature on January 13, 1993, together with related annexes and associated documents.

(e) PLAN FOR PILOT PROGRAM.—If the Secretary of Defense proceeds with a pilot program under section 152(f) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 214; 50 U.S.C. 1521 note), the Secretary shall prepare a plan for the pilot program and shall submit to Congress a report on such plan (including information on the cost of, and schedule for, implementing the pilot program).

(f) FUNDING.—(1) Of the amount authorized to be appropriated under section 107, funds shall be available for the program manager for the Assembled Chemical Weapons Assessment for the following:

(A) Demonstrations of alternative technologies under the Assembled Chemical Weapons Assessment.

(B) Planning and preparation to proceed from demonstration of an alternative technology immediately into the development of a pilot-scale facility for the technology, including planning and preparation for—

(i) continued development of the technology leading to deployment of the technology for use;

(ii) satisfaction of requirements for environmental permits;

(iii) demonstration, testing, and evaluation;

(iv) initiation of actions to design a pilot plant;

(v) provision of support at the field office or depot level for deployment of the technology for use; and

(vi) educational outreach to the public to engender support for the deployment.

(C) The independent evaluation of cost and schedule required under subsection (c).

(2) Funds authorized to be appropriated under section 107(1) are authorized to be used for awarding contracts in accordance with subsection (d) and for taking any other action authorized in this section.

(g) [1]ASSEMBLED CHEMICAL WEAPONS ASSESSMENT DEFINED.—In this section, the term "Assembled Chemical Weapons Assessment" means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).

National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle E—Chemical Demilitarization Program

* * * * * * *

SEC. 152. [50 U.S.C. 1521 note] DESTRUCTION OF EXISTING STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS.

(a) IN GENERAL.—The Secretary of Defense shall proceed with the program for destruction of the chemical munitions stockpile of the Department of Defense while maintaining the maximum protection of the environment, the general public, and the personnel involved in the actual destruction of the munitions. In carrying out such program, the Secretary shall use technologies and procedures that will minimize the risk to the public at each site.

(b) INITIATION OF DEMILITARIZATION OPERATIONS.—The Secretary of Defense may not initiate destruction of the chemical munitions stockpile stored at a site until the following support measures are in place:

(1) Support measures that are required by Department of Defense and Army chemical surety and security program regulations.

(2) Support measures that are required by the general and site chemical munitions demilitarization plans specific to that installation.

(3) Support measures that are required by the permits required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.) for chemical munitions demilitarization operations at that installation, as approved by the appropriate State regulatory agencies.

(c) ASSESSMENT OF ALTERNATIVES.—(1) The Secretary of Defense shall conduct an assessment of the current chemical demilitarization program and of measures that could be taken to reduce significantly the total cost of the program, while ensuring maximum protection of the general public, the personnel involved in

---

[1] Section 8065 of the Department of Defense Appropriations Act, 1997, referred to in subsection (g) above, made available $40,000,000 to the Under Secretary of Defense for Acquisition and Technology to conduct a pilot program to identify and demonstrate not less than two alternatives to the baseline incineration process for the demilitarization of assembled chemical munitions.

the demilitarization program, and the environment. The measures considered shall be limited to those that would minimize the risk to the public. The assessment shall be conducted without regard to any limitation that would otherwise apply to the conduct of such an assessment under any provision of law.

(2) The assessment shall be conducted in coordination with the National Research Council.

(3) Based on the results of the assessment, the Secretary shall develop appropriate recommendations for revision of the chemical demilitarization program.

(4) Not later than March 1, 1996, the Secretary of Defense shall submit to the congressional defense committees an interim report assessing the current status of the chemical stockpile demilitarization program, including the results of the Army's analysis of the physical and chemical integrity of the stockpile and implications for the chemical demilitarization program, and providing recommendations for revisions to that program that have been included in the budget request of the Department of Defense for fiscal year 1997. The Secretary shall submit to the congressional defense committees with the submission of the budget request of the Department of Defense for fiscal year 1998 a final report on the assessment conducted in accordance with paragraph (1) and recommendations for revision to the program, including an assessment of alternative demilitarization technologies and processes to the baseline incineration process and potential reconfiguration of the stockpile that should be incorporated in the program.

(d) ASSISTANCE FOR CHEMICAL WEAPONS STOCKPILE COMMUNITIES AFFECTED BY BASE CLOSURE.—(1) The Secretary of Defense shall review and evaluate issues associated with closure and reutilization of Department of Defense facilities co-located with continuing chemical stockpile and chemical demilitarization operations.

(2) The review shall include the following:

(A) An analysis of the economic impacts on these communities and the unique reuse problems facing local communities associated with ongoing chemical weapons programs.

(B) Recommendations of the Secretary on methods for expeditious and cost-effective transfer or lease of these facilities to local communities for reuse by those communities.

(3) The Secretary shall submit to the congressional defense committees a report on the review and evaluation under this subsection. The report shall be submitted not later than 90 days after the date of the enactment of this Act [Feb. 10, 1996].

(e) ASSESSMENT OF ALTERNATIVE TECHNOLOGIES FOR DEMILITARIZATION OF ASSEMBLED CHEMICAL MUNITIONS.—(1) In addition to the assessment required by subsection (c), the Secretary of Defense shall conduct an assessment of the chemical demilitarization program for destruction of assembled chemical munitions and of the alternative demilitarization technologies and processes (other than incineration) that could be used for the destruction of the lethal chemical agents that are associated with these munitions, while ensuring maximum protection for the general public, the personnel involved in the demilitarization program, and the environment. The measures considered shall be limited to those that would

minimize the risk to the public and reduce the total cost of the chemical agents and munitions destruction program. The assessment shall be conducted without regard to any limitation that would otherwise apply to the conduct of such assessment under any provision of law.

(2) The assessment shall be conducted in coordination with the National Research Council.

(3) Among the alternatives, the assessment shall include a determination of the cost of incineration of the current chemical munitions stockpile by building incinerators at each existing facility compared to the proposed cost of dismantling those same munitions, neutralizing them at each storage site (other than Tooele Army Depot or Johnston Atoll), and transporting the neutralized remains and all munitions parts to a treatment, storage, and disposal facility within the United States that has the necessary environmental permits to undertake incineration of the material.

(4) Based on the results of the assessment, the Secretary shall develop appropriate recommendations for revision of the chemical demilitarization program.

(5) Not later than December 31, 1997, the Secretary of Defense shall submit to Congress a report on the assessment conducted in accordance with paragraph (1) and any recommendations for revision of the chemical demilitarization program, including the continued development of alternative demilitarization technologies and processes other than incineration that could be used for the destruction of the lethal chemical agents that are associated with these assembled chemical munitions and the chemical munitions demilitarization sites for which the selected technologies should be developed.

(f) PILOT PROGRAM FOR DEMILITARIZATION OF CHEMICAL AGENTS FOR ASSEMBLED MUNITIONS.—(1) If the Secretary of Defense makes a decision to continue the development of an alternative demilitarization technology or process (other than incineration) that could be used for the destruction of the lethal chemical agents that are associated with assembled chemical munitions, $25,000,000 shall be available from the funds authorized to be appropriated in section 107 of the National Defense Authorization Act for Fiscal Year 1997 for the chemical agents and munitions destruction program, in order to initiate a pilot program using the selected alternative technology or process for the destruction of chemical agents that are stored at these sites.

(2) Not less than 30 days before using funds to initiate the pilot program under paragraph (1), the Secretary shall submit notice in writing to Congress of the Secretary's intent to do so.

National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle G—Chemical Demilitarization Program

* * * * * * *

SEC. 172. [50 U.S.C. 1521 note] CHEMICAL DEMILITARIZATION CITIZENS ADVISORY COMMISSIONS.

(a) ESTABLISHMENT.—(1) The Secretary of the Army shall establish a citizens' commission for each State in which there is a low-volume site (as defined in section 180). Each such commission shall be known as the "Chemical Demilitarization Citizens' Advisory Commission" for that State.

(2) The Secretary shall also establish a Chemical Demilitarization Citizens' Advisory Commission for any State in which there is located a chemical weapons storage site other than a low-volume site, if the establishment of such a commission for such State is requested by the Governor of that State.

(b) FUNCTIONS.—The Secretary of the Army shall provide for a representative from the Office of the Assistant Secretary of the Army (Research, Development and Acquisition) to meet with each commission under this section to receive citizen and State concerns regarding the ongoing program of the Army for the disposal of the lethal chemical agents and munitions in the stockpile referred to in section 1412(a)(1) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(1)) at each of the sites with respect to which a commission is established pursuant to subsection (a).

(c) MEMBERSHIP.—(1) Each commission established for a State pursuant to subsection (a) shall be composed of nine members appointed by the Governor of the State. Seven of such members shall be citizens from the local affected areas in the State; the other two shall be representatives of State government who have direct responsibilities related to the chemical demilitarization program.

(2) For purposes of paragraph (1), affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.

(d) CONFLICTS OF INTEREST.—For a period of five years after the termination of any commission, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, or a natural or adopted child of a member of that commission has an ownership interest may be awarded—

(1) a contract related to the disposal of lethal chemical agents or munitions in the stockpile referred to in section 1412(a)(1) of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521(a)(1)); or

(2) a subcontract under such a contract.

(e) CHAIRMAN.—The members of each commission shall designate the chairman of the commission from among the members of the commission.

(f) MEETINGS.—Each commission shall meet with a representative from the Office of the Assistant Secretary of the Army (Research, Development and Acquisition) upon joint agreement between the chairman of the commission and that representative. The two parties shall meet not less often than twice a year and may meet more often at their discretion.

(g) PAY AND EXPENSES.—Members of each commission shall receive no pay for their involvement in the activities of their commissions. Funds appropriated for the Chemical Stockpile Demilitarization Program may be used for travel and associated travel costs for Citizens' Advisory Commissioners, when such travel is conducted at the invitation of the Assistant Secretary of the Army (Research, Development, and Acquisition).

(h) TERMINATION OF COMMISSIONS.—Each commission shall be terminated after the stockpile located in that commission's State has been destroyed.

* * * * * * *

SEC. 174. [50 U.S.C. 1521 note] ALTERNATIVE DISPOSAL PROCESS FOR LOW-VOLUME SITES.

(a) REQUIREMENT FOR ALTERNATIVE PROCESS.—If the date by which chemical weapons destruction and demilitarization operations can be completed at a low-volume site using an alternative technology process evaluated by the Secretary of the Army falls within the deadline established by the amendment made by section 171 and the Secretary determines that the use of that alternative technology process for the destruction of chemical weapons at that site is significantly safer and equally or more cost-effective than the use of the baseline disassembly and incineration process, then the Secretary of the Army, as part of the requirement of section 1412(a) of Public Law 99–145, shall carry out the disposal of chemical weapons at that site using such alternative technology process. In addition, the Secretary may carry out the disposal of chemical weapons at sites other than low-volume sites using an alternative technology process (rather than the baseline process) after notifying Congress of the Secretary's intent to do so.

(b) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsections (c), (e), (f), and (g) of section 1412 of Public Law 99–145 (50 U.S.C. 1521) shall apply to this section and to activities under this section in the same manner as if this section were part of that section 1412.

SEC. 175. [50 U.S.C. 1521 note] REVISED CHEMICAL WEAPONS DISPOSAL CONCEPT PLAN.

(a) REVISED PLAN.—If, pursuant to section 174, the Secretary of the Army is required to implement an alternative technology process for destruction of chemical weapons at any low volume site, the Secretary shall submit to Congress a revised chemical weapons disposal concept plan incorporating the alternative technology process and reflecting the revised stockpile disposal schedule developed under section 1412(b) of Public Law 99–145 (50 U.S.C. 1521(b)), as amended by section 171. In developing the revised concept plan, the Secretary should consider, to the maximum extent practicable, revisions to the program and program schedule that capitalize on the changes to the chemical demilitarization schedule resulting from the revised stockpile elimination deadline by reducing cost and decreasing program risk.

(b) MATTERS TO BE INCLUDED.—The revised concept plan should include—

(1) life-cycle cost estimates and schedules; and

(2) a description of the facilities and operating procedures to be employed using the alternative technology process.

(c) APPLICABILITY OF CERTAIN PROVISIONS OF SECTION 1412.—Subsection (c) of section 1412 of Public Law 99–145 (50 U.S.C. 1521) shall apply to the revised concept plan in the same manner as if this section were part of that section 1412.

(d) SUBMISSION OF REVISED PLAN.—If the Secretary is required to submit a revised concept plan under this section, the Secretary shall submit the revised concept plan during the 120-day period beginning at the end of the 60-day period following the submission of the report of the Secretary required under section 173.

(e) LIMITATION.—If the Secretary is required to submit a revised concept plan under this section, no funds may be obligated for procurement of equipment or for facilities planning and design activities (other than for those preliminary planning and design activities required to comply with subsection(b)(2)) for a chemical weapons disposal facility at any low-volume site at which the Secretary intends to implement an alternative technology process until the Secretary submits the revised concept plan.

* * * * * * *

SEC. 180. [50 U.S.C. 1521 note] DEFINITION OF LOW-VOLUME SITE.

For purposes of this subtitle, the term "low-volume site" means one of the three chemical weapons storage sites in the United States at which there is stored 5 percent or less of the total United States stockpile of unitary chemical weapons.

---

c. Section 409 of the Act of November 19, 1969

(Public Law 91–121, approved Nov. 19, 1969)

SEC. 409. (a) **[**50 U.S.C. 1511**]** **[**Repealed by section 1061(k) of Public Law 104–106.**]**

(b) **[**50 U.S.C. 1512**]** None of the funds authorized to be appropriated by this Act or any other Act may be used for the transportation of any lethal chemical or any biological warfare agent to or from any military installation in the United States, the open air testing of any such agent within the United States, or the disposal of any such agent within the United States until the following procedures have been implemented:

(1) the Secretary of Defense (hereafter referred to in this section as the "Secretary") has determined that the transportation or testing proposed to be made is necessary in the interests of national security;

(2) the Secretary has brought the particulars of the proposed transportation or testing to the attention of the Secretary of Health, Education, and Welfare, who in turn may direct the Surgeon General of the Public Health Service and other qualified persons to review such particulars with respect to any hazards to public health and safety which such transportation, testing, or disposal may pose and to recommend what precautionary measures are necessary to protect the public health and safety;

(3) the Secretary has implemented any precautionary measures recommended in accordance with paragraph (2) above (including where practicable, the detoxification of any such agent, if such agent is to be transported to or from a military installation for disposal): *Provided, however,* That in the event the Secretary finds the recommendation submitted by the Surgeon General would have the effect of preventing the proposed transportation or testing, the President may determine that overriding considerations of national security require such transportation, testing, or disposal be conducted. Any transportation or testing conducted pursuant to such a Presidential determination shall be carried out in the safest practicable manner, and the President shall report his determination and an explanation thereof to the President of the Senate and the Speaker of the House of Representatives as far in advance as practicable; and

(4) the Secretary has provided notification that the transportation, testing, or disposal will take place, except where a Presidential determination has been made: (A) to the President of the Senate and the Speaker of the House of Representatives at least 10 days before any such transportation will be commenced and at least 30 days before any such testing or disposal will be commenced; (B) to the Governor of any State through which such agents will be transported, such notification to be provided appropriately in advance of any such transportation.

(c) [50 U.S.C. 1513] (1) None of the funds authorized to be appropriated by this Act or any other Act may be used for the future deployment, storage, or disposal at any place outside the United States of—

(A) any lethal chemical or any biological warfare agent, or

(B) any delivery system specfically designed to disseminate any such agent,

unless prior notice of such deployment, storage, or disposal has been given to the country exercising jurisdiction over such place. In the case of any place outside the United States which is under the jurisdiction or control of the United States Government, no such action may be taken unless the Secretary gives prior notice of such action to the President of the Senate and the Speaker of the House of Representatives. As used in this paragraph, the term "United States" means the several States and the District of Columbia.

(2) None of the funds authorized by this Act or any other Act shall be used for the future testing, development, transportation, storage, or disposal of any lethal chemical or any biological warfare agent outside the United States, or for the disposal of any munitions in international waters, if the Secretary of State, after appropriate notice by the Secretary whenever any such action is contemplated, determines that such testing, development, transportation, storage, or disposal will violate international law. The Secretary of State shall report all determinations made by him under this paragraph to the President of the Senate and the Speaker of the House of Representatives, and to all appropriate international organizations, or organs thereof, in the event such report is required by treaty or other international agreement.

(d) [50 U.S.C. 1514] Unless otherwise indicated, as used in this section the term "United States" means the several States, the District of Columbia, and the territories and possessions of the United States.

(e) [50 U.S.C. 1515] After the effective date of this Act, the operation of this section, or any portion thereof, may be suspended by the President during the period of any war declared by Congress and during the period of any national emergency declared by Congress or by the President.

(f) [50 U.S.C. 1516 note] None of the funds authorized to be appropriated by this Act may be used for the procurement of any delivery system specifically designed to disseminate any lethal chemical or any biological warfare agent, or for the procurement of any part or component of any such delivery system, unless the President shall certify to the Congress that such procurement is essential to the safety and security of the United States.

(g) [50 U.S.C. 1517] Nothing contained in this section shall be deemed to restrict the transportation or disposal of research quantities of any lethal chemical or any biological warfare agent, or to dalay or prevent, in emergency situations either within or outside the United States, the immediate disposal together with any necessary associated transportation, of any lethal chemical or any biological warfare agent when compliance with the procedures and requirements of this section would clearly endanger the health or safety of any person.

---

d. Other Laws Related to Chemical and Biological Weapons

National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle G—Other Matters

* * * * * * *

SEC. 1065. CHEMICAL AGENTS USED FOR DEFENSIVE TRAINING.

(a) AUTHORITY TO TRANSFER AGENTS.—(1) The Secretary of Defense may transfer to the Attorney General, in accordance with the Chemical Weapons Convention, quantities of lethal chemical agents required to support training at the Center for Domestic Preparedness in Fort McClellan, Alabama. The quantity of lethal chemical agents transferred under this section may not exceed that required to support training for emergency first-response personnel in addressing the health, safety, and law enforcement concerns associated with potential terrorist incidents that might involve the use of lethal chemical weapons or agents, or other training designated by the Attorney General.

(2) The Secretary of Defense, in coordination with the Attorney General, shall determine the amount of lethal chemical agents that

shall be transferred under this section. Such amount shall be transferred from quantities of lethal chemical agents that are produced, acquired, or retained by the Department of Defense.

(3) The Secretary of Defense may not transfer lethal chemical agents under this section until—

(A) the Center referred to in paragraph (1) is transferred from the Department of Defense to the Department of Justice; and

(B) the Secretary determines that the Attorney General is prepared to receive such agents.

(4) To carry out the training described in paragraph (1) and other defensive training not prohibited by the Chemical Weapons Convention, the Secretary of Defense may transport lethal chemical agents from a Department of Defense facility in one State to a Department of Justice or Department of Defense facility in another State.

(5) Quantities of lethal chemical agents transferred under this section shall meet all applicable requirements for transportation, storage, treatment, and disposal of such agents and for any resulting hazardous waste products.

(b) ANNUAL REPORT.—The Secretary of Defense, in consultation with the Attorney General, shall report annually to Congress regarding the disposition of lethal chemical agents transferred under this section.

(c) NON-INTERFERENCE WITH TREATY OBLIGATIONS.—Nothing in this section may be construed as interfering with United States treaty obligations under the Chemical Weapons Convention.

(d) CHEMICAL WEAPONS CONVENTION DEFINED.—In this section, the term "Chemical Weapons Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE I—PROCUREMENT

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 143. [50 U.S.C. 1512a] TRANSPORTATION OF CHEMICAL MUNITIONS.

(a) PROHIBITION OF TRANSPORTATION ACROSS STATE LINES.—The Secretary of Defense may not transport any chemical munition that constitutes part of the chemical weapons stockpile out of the State in which that munition is located on the date of the enactment of this Act [October 5, 1994] and, in the case of any such chemical munition not located in a State on the date of the enactment of this Act, may not transport any such munition into a State.

(b) TRANSPORTATION OF CHEMICAL MUNITIONS NOT IN CHEMICAL WEAPONS STOCKPILE.—In the case of any chemical munitions that are discovered or otherwise come within the control of the Department of Defense and that do not constitute part of the chemical weapons stockpile, the Secretary of Defense may transport such munitions to the nearest chemical munitions stockpile storage facility that has necessary permits for receiving and storing such items if the transportation of such munitions to that facility—

(1) is considered by the Secretary of Defense to be necessary; and

(2) can be accomplished while protecting public health and safety.

National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE XVII—CHEMICAL AND BIOLOGICAL WEAPONS DEFENSE

SEC. 1701. [50 U.S.C. 1522] CONDUCT OF THE CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM.

(a) GENERAL.—The Secretary of Defense shall carry out the chemical and biological defense program of the United States in accordance with the provisions of this section.

(b) MANAGEMENT AND OVERSIGHT.—In carrying out his responsibilities under this section, the Secretary of Defense shall do the following:

(1) Assign responsibility for overall coordination and integration of the chemical and biological warfare defense program and the chemical and biological medical defense program to a single office within the Office of the Secretary of Defense.

(2) Take those actions necessary to ensure close and continuous coordination between (A) the chemical and biological warfare defense program, and (B) the chemical and biological medical defense program.

(3) Exercise oversight over the chemical and biological defense program through the Defense Acquisition Board process.

(c) COORDINATION OF THE PROGRAM.—(1) The Secretary of Defense shall designate the Army as executive agent for the Department of Defense to coordinate and integrate research, development, test, and evaluation, and acquisition, requirements of the military departments for chemical and biological warfare defense programs of the Department of Defense.

(2) The Director of the Defense Advanced Research Projects Agency may conduct a program of basic and applied research and advanced technology development on chemical and biological warfare defense technologies and systems. In conducting such program, the Director shall seek to avoid unnecessary duplication of the activities under the program with chemical and biological warfare defense activities of the military departments and defense agencies and shall coordinate the activities under the program with those of the military departments and defense agencies.

(d) FUNDING.—(1) The budget for the Department of Defense for each fiscal year after fiscal year 1994 shall reflect a coordinated and integrated chemical and biological defense program for the Department of Defense.

(2) Funding requests for the program (other than for activities under the program conducted by the Defense Advanced Research Projects Agency under subsection (c)(2)) shall be set forth in the budget of the Department of Defense for each fiscal year as a separate account, with a single program element for each of the categories of research, development, test, and evaluation, acquisition, and military construction. Amounts for military construction projects may be set forth in the annual military construction budget. Funds for military construction for the program in the military construction budget shall be set forth separately from other funds for military construction projects. Funding requests for the program may not be included in the budget accounts of the military departments.

(3) The program conducted by the Defense Advanced Research Projects Agency under subsection (c)(2) shall be set forth as a separate program element in the budget of that agency.

(4) All funding requirements for the chemical and biological defense program shall be reviewed by the Secretary of the Army as executive agent pursuant to subsection (c).

(e) MANAGEMENT REVIEW AND REPORT.—(1) The Secretary of Defense shall conduct a review of the management structure of the Department of Defense chemical and biological warfare defense program, including—

(A) research, development, test, and evaluation;
(B) procurement;
(C) doctrine development;
(D) policy;
(E) training;
(F) development of requirements;
(G) readiness; and
(H) risk assessment.

(2) Not later than May 1, 1994, the Secretary shall submit to Congress a report that describes the details of measures being taken to improve joint coordination and oversight of the program and ensure a coherent and effective approach to its management.

SEC. 1702. [50 U.S.C. 1522 note] CONSOLIDATION OF CHEMICAL AND BIOLOGICAL DEFENSE TRAINING ACTIVITIES.

The Secretary of Defense shall consolidate all chemical and biological warfare defense training activities of the Department of Defense at the United States Army Chemical School.

SEC. 1703. [50 U.S.C. 1523] ANNUAL REPORT ON CHEMICAL AND BIOLOGICAL WARFARE DEFENSE.

(a) REPORT REQUIRED.—The Secretary of Defense shall include in the annual report of the Secretary under section 113(c) of title 10, United States Code, a report on chemical and biological warfare defense. The report shall assess—

(1) the overall readiness of the Armed Forces to fight in a chemical-biological warfare environment and shall describe

steps taken and planned to be taken to improve such readiness; and

(2) requirements for the chemical and biological warfare defense program, including requirements for training, detection, and protective equipment, for medical prophylaxis, and for treatment of casualties resulting from use of chemical or biological weapons.

(b) MATTERS TO BE INCLUDED.—The report shall include information on the following:

(1) The quantities, characteristics, and capabilities of fielded chemical and biological defense equipment to meet wartime and peacetime requirements for support of the Armed Forces, including individual protective items.

(2) The status of research and development programs, and acquisition programs, for required improvements in chemical and biological defense equipment and medical treatment, including an assessment of the ability of the Department of Defense and the industrial base to meet those requirements.

(3) Measures taken to ensure the integration of requirements for chemical and biological defense equipment and material among the Armed Forces.

(4) The status of nuclear, biological, and chemical (NBC) warfare defense training and readiness among the Armed Forces and measures being taken to include realistic nuclear, biological, and chemical warfare simulations in war games, battle simulations, and training exercises.

(5) Measures taken to improve overall management and coordination of the chemical and biological defense program.

(6) Problems encountered in the chemical and biological warfare defense program during the past year and recommended solutions to those problems for which additional resources or actions by the Congress are required.

(7) A description of the chemical warfare defense preparations that have been and are being undertaken by the Department of Defense to address needs which may arise under article X of the Chemical Weapons Convention.

(8) A summary of other preparations undertaken by the Department of Defense and the On-Site Inspection Agency to prepare for and to assist in the implementation of the convention, including activities such as training for inspectors, preparation of defense installations for inspections under the convention using the Defense Treaty Inspection Readiness Program, provision of chemical weapons detection equipment, and assistance in the safe transportation, storage, and destruction of chemical weapons in other signatory nations to the convention.

(9) A description of any program involving the testing of biological or chemical agents on human subjects that was carried out by the Department of Defense during the period covered by the report, together with—

(A) a detailed justification for the testing;

(B) a detailed explanation of the purposes of the testing;

(C) a description of each chemical or biological agent tested; and

(D) the Secretary's certification that informed consent to the testing was obtained from each human subject in advance of the testing on that subject.

SEC. 1704. [50 U.S.C. 1522 note] SENSE OF CONGRESS CONCERNING FEDERAL EMERGENCY PLANNING FOR RESPONSE TO TERRORIST THREATS.

It is the sense of Congress that the President should strengthen Federal interagency emergency planning by the Federal Emergency Management Agency and other appropriate Federal, State, and local agencies for development of a capability for early detection and warning of and response to—

(1) potential terrorist use of chemical or biological agents or weapons; and

(2) emergencies or natural disasters involving industrial chemicals or the widespread outbreak of disease.

SEC. 1705. [50 U.S.C. 1524] AGREEMENTS TO PROVIDE SUPPORT TO VACCINATION PROGRAMS OF DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense may enter into agreements with the Secretary of Health and Human Services to provide support for vaccination programs of the Secretary of Health and Human Services in the United States through use of the excess peacetime biological weapons defense capability of the Department of Defense.

(b) REPORT.—Not later than February 1, 1994, the Secretary of Defense shall submit to the congressional defense committees a report on the feasibility of providing Department of Defense support for vaccination programs under subsection (a) and shall identify resource requirements that are not within the Department's capability.

Department of Defense Authorization Act, 1984

(Public Law 98–94; approved Sept. 24, 1983)

TITLE XII—GENERAL PROVISIONS

* * * * * * *

LIMITATION ON PROCUREMENT OF BINARY CHEMICAL WEAPONS

SEC. 1233. [50 U.S.C. 1519a] (a) Notwithstanding any other provision of law, no funds may be obligated or expended after the date of the enactment of this Act [Sept. 24, 1983] for the production of binary chemical weapons unless the President certifies to the Congress that for each 155-millimeter binary artillery shell or aircraft-delivery binary aerial bomb produced a serviceable unitary artillery shell from the existing arsenal shall be rendered permanently useless for military purposes.

(b)(1) Funds appropriated pursuant to the authorization of appropriations for the Army in section 101 of this Act may be used for the establishment of a production base for binary chemical munitions and for the procurement of components for 155-millimeter binary chemical artillery projectiles, but such funds may not

be used for the actual production of binary chemical munitions before October 1, 1985.

(2) Notwithstanding the provisions of paragraph (1), before the production of binary chemical munitions may begin after September 30, 1985, the President must certify to Congress in writing that, in light of circumstances prevailing at the time the certification is made, the production of such munitions is essential to the national interest.

(3) For purpose of this subsection, "production of binary chemical munitions" means the final assembly of weapon components and the filling or loading of components with binary chemicals.

---

e. Chemical Weapons Convention Implementation Act of 1998

(Division I of Public Law 105–277; 112 Stat. 2681–856; approved Oct. 21, 1998)

DIVISION I—CHEMICAL WEAPONS CONVENTION

SECTION 1. [22 U.S.C. 6701 note] SHORT TITLE.

This Division may be cited as the "Chemical Weapons Convention Implementation Act of 1998".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.

TITLE I—GENERAL PROVISIONS

Sec. 101. Designation of United States National Authority.
Sec. 102. No abridgement of constitutional rights.
Sec. 103. Civil liability of the United States.

TITLE II—PENALTIES FOR UNLAWFUL ACTIVITIES SUBJECT TO THE JURISDICTION OF THE UNITED STATES

Subtitle A—Criminal and Civil Penalties

Sec. 201. Criminal and civil provisions.

Subtitle B—Revocations of Export Privileges

Sec. 211. Revocations of export privileges.

TITLE III—INSPECTIONS

Sec. 301. Definitions in the title.
Sec. 302. Facility agreements.
Sec. 303. Authority to conduct inspections.
Sec. 304. Procedures for inspections.
Sec. 305. Warrants.
Sec. 306. Prohibited acts relating to inspections.
Sec. 307. National security exception.
Sec. 308. Protection of constitutional rights of contractors.
Sec. 309. Annual report on inspections.
Sec. 310. United States assistance in inspections at private facilities.

TITLE IV—REPORTS

Sec. 401. Reports required by the United States National Authority.
Sec. 402. Prohibition relating to low concentrations of schedule 2 and 3 chemicals.
Sec. 403. Prohibition relating to unscheduled discrete organic chemicals and coincidental byproducts in waste streams.
Sec. 404. Confidentiality of information.
Sec. 405. Recordkeeping violations.

TITLE V—ENFORCEMENT

Sec. 501. Penalties.
Sec. 502. Specific enforcement.
Sec. 503. Expedited judicial review.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Repeal.
Sec. 602. Prohibition.
Sec. 603. Bankruptcy actions.

SEC. 3. [22 U.S.C. 6701] DEFINITIONS.

In this Act:

(1) CHEMICAL WEAPON.—The term "chemical weapon" means the following, together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this Act as long as the type and quantity is consistent with such a purpose.

(B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

(2) CHEMICAL WEAPONS CONVENTION; CONVENTION.—The terms "Chemical Weapons Convention" and "Convention" mean the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

(3) KEY COMPONENT OF A BINARY OR MULTICOMPONENT CHEMICAL SYSTEM.—The term "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

(4) NATIONAL OF THE UNITED STATES.—The term "national of the United States" has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(5) ORGANIZATION.—The term "Organization" means the Organization for the Prohibition of Chemical Weapons.

(6) PERSON.—The term "person", except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

(7) PRECURSOR.—

(A) IN GENERAL.—The term "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The

term includes any key component of a binary or multicomponent chemical system.

(B) LIST OF PRECURSORS.—Precursors which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(8) PURPOSES NOT PROHIBITED BY THIS ACT.—The term "purposes not prohibited by this Act" means the following:

(A) PEACEFUL PURPOSES.—Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity.

(B) PROTECTIVE PURPOSES.—Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

(C) UNRELATED MILITARY PURPOSES.—Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm.

(D) LAW ENFORCEMENT PURPOSES.—Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

(9) TECHNICAL SECRETARIAT.—The term "Technical Secretariat" means the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

(10) SCHEDULE 1 CHEMICAL AGENT.—The term "Schedule 1 chemical agent" means any of the following, together or separately:

(A) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates
(e.g. Sarin: O-Isopropyl methylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate).

(B) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates
(e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate).

(C) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl
(Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts
(e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate).

(D) Sulfur mustards:
2-Chloroethylchloromethylsulfide
Mustard gas: (Bis(2-chloroethyl)sulfide
Bis(2-chloroethylthio)methane
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane
1,3-Bis(2-chloroethylthio)-n-propane
1,4-Bis(2-chloroethylthio)-n-butane
1,5-Bis(2-chloroethylthio)-n-pentane
Bis(2-chloroethylthiomethyl)ether

O-Mustard: Bis(2-chloroethylthioethyl)ether.
(E) Lewisites:
Lewisite 1: 2-Chlorovinyldichloroarsine
Lewisite 2: Bis(2-chlorovinyl)chloroarsine
Lewisite 3: Tris (2-clorovinyl)arsine.
(F) Nitrogen mustards:
HN1: Bis(2-chloroethyl)ethylamine
HN2: Bis(2-chloroethyl)methylamine
HN3: Tris(2-chloroethyl)amine.
(G) Saxitoxin.
(H) Ricin.
(I) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides
e.g. DF: Methylphosphonyldifluoride.
(J) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl)O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts
e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite.
(K) Chlorosarin: O-Isopropyl methylphosphonochloridate.
(L) Chlorosoman: O-Pinacolyl methylphosphonochloridate.

(11) SCHEDULE 2 CHEMICAL AGENT.—The term "Schedule 2 chemical agent" means the following, together or separately:

(A) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts.

(B) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene.

(C) BZ: 3-Quinuclidinyl benzilate

(D) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms,

e.g. Methylphosphonyl dichloride Dimethyl methylphosphonate
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate.

(E) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides.

(F) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates.

(G) arsenic trichloride.

(H) 2,2-Diphenyl-2-hydroxyacetic acid.

(I) Quinuclidine-3-ol.

(J) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts.

(K) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts

Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts N,N-Diethylaminoethanol and corresponding protonated salts.

(L) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.

(M) Thiodiglycol: Bis(2-hydroxyethyl)sulfide.

(N) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol.

(12) SCHEDULE 3 CHEMICAL AGENT.—The term "Schedule 3 chemical agent" means any of the following, together or separately:

(A) Phosgene: carbonyl dichloride.
(B) Cyanogen chloride.
(C) Hydrogen cyanide.
(D) Chloropicrin: trichloronitromethane.
(E) Phosphorous oxychloride.
(F) Phosphorous trichloride.
(G) Phosphorous pentachloride.
(H) Trimethyl phosphite.
(I) Triethyl phosphite.
(J) Dimethyl phosphite.
(K) Diethyl phosphite.
(L) Sulfur monochloride.
(M) Sulfur dichloride.
(N) Thionyl chloride.
(O) Ethyldiethanolamine.
(P) Methyldiethanolamine.
(Q) Triethanolamine.

(13)[1] TOXIC CHEMICAL.—

(A)[1] IN GENERAL.—The term "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(B) LIST OF TOXIC CHEMICALS.—Toxic chemicals which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(14) UNITED STATES.—The term "United States" means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

(A) any of the places within the provisions of paragraph (41) of section 40102 of title 49, United States Code;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (37), respectively, of section 40102 of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b)).

(15) UNSCHEDULED DISCRETE ORGANIC CHEMICAL.—The term "unscheduled discrete organic chemical" means any chemical not listed on any schedule contained in the Annex on Chemicals of the Convention that belongs to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates.

[1] Margin so in law.

TITLE I—GENERAL PROVISIONS

SEC. 101. [22 U.S.C. 6711] DESIGNATION OF UNITED STATES NATIONAL AUTHORITY.

(a) DESIGNATION.—Pursuant to paragraph 4 of Article VII of the Chemical Weapons Convention, the President shall designate the Department of State to be the United States National Authority.

(b) PURPOSES.—The United States National Authority shall—

(1) serve as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention; and

(2) implement the provisions of this Act in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of agencies considered necessary or advisable by the President.

(c) DIRECTOR.—The Secretary of State shall serve as the Director of the United States National Authority.

(d) POWERS.—The Director may utilize the administrative authorities otherwise available to the Secretary of State in carrying out the responsibilities of the Director set forth in this Act.

(e) IMPLEMENTATION.—The President is authorized to implement and carry out the provisions of this Act and the Convention and shall designate through Executive order which agencies of the United States shall issue, amend, or revise the regulations in order to implement this Act and the provisions of the Convention. The Director of the United States National Authority shall report to the Congress on the regulations that have been issued, implemented, or revised pursuant to this section.

SEC. 102. [22 U.S.C. 6712] NO ABRIDGEMENT OF CONSTITUTIONAL RIGHTS.

No person may be required, as a condition for entering into a contract with the United States or as a condition for receiving any benefit from the United States, to waive any right under the Constitution for any purpose related to this Act or the Convention.

SEC. 103. [22 U.S.C. 6713] CIVIL LIABILITY OF THE UNITED STATES.

(a) CLAIMS FOR TAKING OF PROPERTY.—

(1) JURISDICTION OF COURTS OF THE UNITED STATES.—

(A) UNITED STATES COURT OF FEDERAL CLAIMS.—The United States Court of Federal Claims shall, subject to subparagraph (B), have jurisdiction of any civil action or claim against the United States for any taking of property without just compensation that occurs by reason of the action of any officer or employee of the Organization for the Prohibition of Chemical Weapons, including any member of an inspection team of the Technical Secretariat, or by reason of the action of any officer or employee of the United States pursuant to this Act or the Convention. For purposes of this subsection, action taken pursuant to or under the color of this Act or the Convention shall be deemed to be action taken by the United States for a public purpose.

(B) DISTRICT COURTS.—The district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action or claim described in subparagraph (A) that does not exceed $10,000.

(2) NOTIFICATION.—Any person intending to bring a civil action pursuant to paragraph (1) shall notify the United States National Authority of that intent at least one year before filing the claim in the United States Court of Federal Claims. Action on any claim filed during that one-year period shall be stayed. The one-year period following the notification shall not be counted for purposes of any law limiting the period within which the civil action may be commenced.

(3) INITIAL STEPS BY UNITED STATES GOVERNMENT TO SEEK REMEDIES.—During the period between a notification pursuant to paragraph (2) and the filing of a claim covered by the notification in the United States Court of Federal Claims, the United States National Authority shall pursue all diplomatic and other remedies that the United States National Authority considers necessary and appropriate to seek redress for the claim including, but not limited to, the remedies provided for in the Convention and under this Act.

(4) BURDEN OF PROOF.—In any civil action under paragraph (1), the plaintiff shall have the burden to establish a prima facie case that, due to acts or omissions of any official of the Organization or any member of an inspection team of the Technical Secretariat taken under the color of the Convention, proprietary information of the plaintiff has been divulged or taken without authorization. If the United States Court of Federal Claims finds that the plaintiff has demonstrated such a prima facie case, the burden shall shift to the United States to disprove the plaintiff's claim. In deciding whether the plaintiff has carried its burden, the United States Court of Federal Claims shall consider, among other things—

(A) the value of proprietary information;

(B) the availability of the proprietary information;

(C) the extent to which the proprietary information is based on patents, trade secrets, or other protected intellectual property;

(D) the significance of proprietary information; and

(E) the emergence of technology elsewhere a reasonable time after the inspection.

(b) TORT LIABILITY.—The district courts of the United States shall have exclusive jurisdiction of civil actions for money damages for any tort under the Constitution or any Federal or State law arising from the acts or omissions of any officer or employee of the United States or the Organization, including any member of an inspection team of the Technical Secretariat, taken pursuant to or under color of the Convention or this Act.

(c) WAIVER OF SOVEREIGN IMMUNITY OF THE UNITED STATES.—In any action under subsection (a) or (b), the United States may not raise sovereign immunity as a defense.

(d) AUTHORITY FOR CAUSE OF ACTION.—

(1) UNITED STATES ACTIONS IN UNITED STATES DISTRICT COURT.—Notwithstanding any other law, the Attorney General of the United States is authorized to bring an action in the United States District Court for the District of Columbia against any foreign nation for money damages resulting from that nation's refusal to provide indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat who is a national of that foreign nation acting at the direction or the behest of that foreign nation.

(2) UNITED STATES ACTIONS IN COURTS OUTSIDE THE UNITED STATES.—The Attorney General is authorized to seek any and all available redress in any international tribunal for indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat, and to seek such redress in the courts of the foreign nation from which the inspector is a national.

(3) ACTIONS BROUGHT BY INDIVIDUALS AND BUSINESSES.—Notwithstanding any other law, any national of the United States, or any business entity organized and operating under the laws of the United States, may bring a civil action in a United States District Court for money damages against any foreign national or any business entity organized and operating under the laws of a foreign nation for an unauthorized or unlawful acquisition, receipt, transmission, or use of property by or on behalf of such foreign national or business entity as a result of any tort under the Constitution or any Federal or State law arising from acts or omissions by any officer or employee of the United States or any member of an inspection team of the Technical Secretariat taken pursuant to or under the color of the Convention or this Act.

(e) RECOUPMENT.—

(1) POLICY.—It is the policy of the United States to recoup all funds withdrawn from the Treasury of the United States in payment for any tort under Federal or State law or taking under the Constitution arising from the acts or omissions of any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, taken under color of the Chemical Weapons Convention or this Act.

(2) SANCTIONS ON FOREIGN COMPANIES.—

(A) IMPOSITION OF SANCTIONS.—The sanctions provided in subparagraph (B) shall be imposed for a period of not less than ten years upon—

(i) any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, for whose actions or omissions the United States has been held liable for a tort or taking pursuant to this Act; and

(ii) any foreign person or business entity organized and operating under the laws of a foreign nation which knowingly assisted, encouraged or induced, in any way, a foreign person described in clause (i) to

publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information.

(B) SANCTIONS.—

(i) ARMS EXPORT TRANSACTIONS.—The United States Government shall not sell to a person described in subparagraph (A) any item on the United States Munitions List and shall terminate sales of any defense articles, defense services, or design and construction services to a person described in subparagraph (A) under the Arms Export Control Act.

(ii) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities under section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a person described in subparagraph (A).

(iii) INTERNATIONAL FINANCIAL ASSISTANCE.—The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 701 of the International Financial Institutions Act to a person described in subparagraph (A).

(iv) EXPORT-IMPORT BANK TRANSACTIONS.—The United States shall not give approval to guarantee, insure, or extend credit, or to participate in the extension of credit to a person described in subparagraph (A) through the Export-Import Bank of the United States.

(v) PRIVATE BANK TRANSACTIONS.—Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a person described in subparagraph (A).

(vi) BLOCKING OF ASSETS.—The President shall take all steps necessary to block any transactions in any property subject to the jurisdiction of the United States in which a person described in subparagraph (A) has any interest whatsoever, for the purpose of recouping funds in accordance with the policy in paragraph (1).

(vii) DENIAL OF LANDING RIGHTS.—Landing rights in the United States shall be denied to any private aircraft or air carrier owned by a person described in subparagraph (A) except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(3) SANCTIONS ON FOREIGN GOVERNMENTS.—

(A) IMPOSITION OF SANCTIONS.—Whenever the President determines that persuasive information is available indicating that a foreign country has knowingly assisted, encouraged or induced, in any way, a person described in paragraph (2)(A) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business in-

formation, the President shall, within 30 days after the receipt of such information by the executive branch of Government, notify the Congress in writing of such determination and, subject to the requirements of paragraphs (4) and (5), impose the sanctions provided under subparagraph (B) for a period of not less than five years.

(B) SANCTIONS.—

(i) ARMS EXPORT TRANSACTIONS.—The United States Government shall not sell a country described in subparagraph (A) any item on the United States Munitions List, shall terminate sales of any defense articles, defense services, or design and construction services to that country under the Arms Export Control Act, and shall terminate all foreign military financing for that country under the Arms Export Control Act.

(ii) DENIAL OF CERTAIN LICENSES.—Licenses shall not be issued for the export to the sanctioned country of any item on the United States Munitions List or commercial satellites.

(iii) DENIAL OF ASSISTANCE.—No appropriated funds may be used for the purpose of providing economic assistance, providing military assistance or grant military education and training, or extending military credits or making guarantees to a country described in subparagraph (A).

(iv) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a country described in subparagraph (A).

(v) INTERNATIONAL FINANCIAL ASSISTANCE.—The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 701 of the International Financial Institutions Act to a country described in subparagraph (A).

(vi) TERMINATION OF ASSISTANCE UNDER FOREIGN ASSISTANCE ACT OF 1961.—The United States shall terminate all assistance to a country described in subparagraph (A) under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance.

(vii) PRIVATE BANK TRANSACTIONS.—The United States shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit through the Export-Import Bank of the United States to a country described in subparagraph (A).

(viii) PRIVATE BANK TRANSACTIONS.—Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a country described in subparagraph (A).

(ix) DENIAL OF LANDING RIGHTS.—Landing rights in the United States shall be denied to any air carrier

owned by a country described in subparagraph (A), except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(4) SUSPENSION OF SANCTIONS UPON RECOUPMENT BY PAYMENT.—Sanctions imposed under paragraph (2) or (3) may be suspended if the sanctioned person, business entity, or country, within the period specified in that paragraph, provides full and complete compensation to the United States Government, in convertible foreign exchange or other mutually acceptable compensation equivalent to the full value thereof, in satisfaction of a tort or taking for which the United States has been held liable pursuant to this Act.

(5) WAIVER OF SANCTIONS ON FOREIGN COUNTRIES.—The President may waive some or all of the sanctions provided under paragraph (3) in a particular case if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that such waiver is necessary to protect the national security interests of the United States. The certification shall set forth the reasons supporting the determination and shall take effect on the date on which the certification is received by the Congress.

(6) NOTIFICATION TO CONGRESS.—Not later than five days after sanctions become effective against a foreign person pursuant to this Act, the President shall transmit written notification of the imposition of sanctions against that foreign person to the chairmen and ranking members of the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(f) SANCTIONS FOR UNAUTHORIZED DISCLOSURE OF UNITED STATES CONFIDENTIAL BUSINESS INFORMATION.—The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States any alien who, after the date of enactment of this Act—

(1) is, or previously served as, an officer or employee of the Organization and who has willfully published, divulged, disclosed, or made known in any manner or to any extent not authorized by the Convention any United States confidential business information coming to him in the course of his employment or official duties, or by reason of any examination or investigation of any return, report, or record made to or filed with the Organization, or any officer or employee thereof, such practice or disclosure having resulted in financial losses or damages to a United States person and for which actions or omissions the United States has been found liable of a tort or taking pursuant to this Act;

(2) traffics in United States confidential business information, a proven claim to which is owned by a United States national;

(3) is a corporate officer, principal, shareholder with a controlling interest of an entity which has been involved in the unauthorized disclosure of United States confidential business

information, a proven claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(g) UNITED STATES CONFIDENTIAL BUSINESS INFORMATION DEFINED.—In this section, the term "United States confidential business information" means any trade secrets or commercial or financial information that is privileged and confidential—

(1) including—

(A) data described in section 304(e)(2) of this Act,

(B) any chemical structure,

(C) any plant design process, technology, or operating method,

(D) any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed, or produced, or

(E) any commercial sale, shipment, or use of a chemical, or

(2) as described in section 552(b)(4) of title 5, United States Code,

and that is obtained—

(i) from a United States person; or

(ii) through the United States Government or the conduct of an inspection on United States territory under the Convention.

TITLE II—PENALTIES FOR UNLAWFUL ACTIVITIES SUBJECT TO THE JURISDICTION OF THE UNITED STATES

Subtitle A—Criminal and Civil Penalties

SEC. 201. CRIMINAL AND CIVIL PROVISIONS.

[Omitted-Amendments]

Subtitle B—Revocations of Export Privileges

SEC. 211. [18 U.S.C. 229 note] REVOCATIONS OF EXPORT PRIVILEGES.

If the President determines, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that any person within the United States, or any national of the United States located outside the United States, has committed any violation of section 229 of title 18, United States Code, the President may issue an order for the suspension or revocation of the authority of the person to export from the United States any goods or technology (as such terms are defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415)).

TITLE III—INSPECTIONS

SEC. 301. [22 U.S.C. 6721] DEFINITIONS IN THE TITLE.

(a) IN GENERAL.—In this title, the terms "challenge inspection", "plant site", "plant", "facility agreement", "inspection team", and "requesting state party" have the meanings given those terms in Part I of the Annex on Implementation and Verification of the Chemical Weapons Convention. The term "routine inspection"

means an inspection, other than an "initial inspection", undertaken pursuant to Article VI of the Convention.

(b) DEFINITION OF JUDGE OF THE UNITED STATES.—In this title, the term "judge of the United States" means a judge or magistrate judge of a district court of the United States.

SEC. 302. [22 U.S.C. 6722] FACILITY AGREEMENTS.

(a) AUTHORIZATION OF INSPECTIONS.—Inspections by the Technical Secretariat of plants, plant sites, or other facilities or locations for which the United States has a facility agreement with the Organization shall be conducted in accordance with the facility agreement. Any such facility agreement may not in any way limit the right of the owner or operator of the facility to withhold consent to an inspection request.

(b) TYPES OF FACILITY AGREEMENTS.—

(1) SCHEDULE TWO FACILITIES.—The United States National Authority shall ensure that facility agreements for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 4 of Article VI of the Convention are concluded unless the owner, operator, occupant, or agent in charge of the facility and the Technical Secretariat agree that such an agreement is not necessary.

(2) SCHEDULE THREE FACILITIES.—The United States National Authority shall ensure that facility agreements are concluded for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 5 or 6 of Article VI of the Convention if so requested by the owner, operator, occupant, or agent in charge of the facility.

(c) NOTIFICATION REQUIREMENTS.—The United States National Authority shall ensure that the owner, operator, occupant, or agent in charge of a facility prior to the development of the agreement relating to that facility is notified and, if the person notified so requests, the person may participate in the preparations for the negotiation of such an agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of a facility may observe negotiations of the agreement between the United States and the Organization concerning that facility.

(d) CONTENT OF FACILITY AGREEMENTS.—Facility agreements shall—

(1) identify the areas, equipment, computers, records, data, and samples subject to inspection;

(2) describe the procedures for providing notice of an inspection to the owner, occupant, operator, or agent in charge of a facility;

(3) describe the timeframes for inspections; and

(4) detail the areas, equipment, computers, records, data, and samples that are not subject to inspection.

SEC. 303. [22 U.S.C. 6723] AUTHORITY TO CONDUCT INSPECTIONS.

(a) PROHIBITION.—No inspection of a plant, plant site, or other facility or location in the United States shall take place under the Convention without the authorization of the United States National Authority in accordance with the requirements of this title.

(b) AUTHORITY.—

(1) TECHNICAL SECRETARIAT INSPECTION TEAMS.—Any duly designated member of an inspection team of the Technical Secretariat may inspect any plant, plant site, or other facility or location in the United States subject to inspection pursuant to the Convention.

(2) UNITED STATES GOVERNMENT REPRESENTATIVES.—The United States National Authority shall coordinate the designation of employees of the Federal Government to accompany members of an inspection team of the Technical Secretariat and, in doing so, shall ensure that—

(A) a special agent of the Federal Bureau of Investigation, as designated by the Federal Bureau of Investigation, accompanies each inspection team visit pursuant to paragraph (1);

(B) no employee of the Environmental Protection Agency or the Occupational Safety and Health Administration accompanies any inspection team visit conducted pursuant to paragraph (1); and

(C) the number of duly designated representatives shall be kept to the minimum necessary.

(3) OBJECTIONS TO INDIVIDUALS SERVING AS INSPECTORS.—

(A) IN GENERAL.—In deciding whether to exercise the right of the United States under the Convention to object to an individual serving as an inspector, the President shall give great weight to his reasonable belief that—

(i) such individual is or has been a member of, or a participant in, any group or organization that has engaged in, or attempted or conspired to engage in, or aided or abetted in the commission of, any terrorist act or activity;

(ii) such individual has committed any act or activity which would be a felony under the laws of the United States; or

(iii) the participation of such individual as a member of an inspection team would pose a risk to the national security or economic well-being of the United States.

(B) NOT SUBJECT TO JUDICIAL REVIEW.—Any objection by the President to an individual serving as an inspector, whether made pursuant to this section or otherwise, shall not be reviewable in any court.

SEC. 304. [22 U.S.C. 6724] PROCEDURES FOR INSPECTIONS.

(a) TYPES OF INSPECTIONS.—Each inspection of a plant, plant site, or other facility or location in the United States under the Convention shall be conducted in accordance with this section and section 305, except where other procedures are provided in a facility agreement entered into under section 302.

(b) NOTICE.—

(1) IN GENERAL.—An inspection referred to in subsection (a) may be made only upon issuance of an actual written notice by the United States National Authority to the owner and to

the operator, occupant, or agent in charge of the premises to be inspected.

(2) TIME OF NOTIFICATION.—The notice for a routine inspection shall be submitted to the owner and to the operator, occupant, or agent in charge within six hours of receiving the notification of the inspection from the Technical Secretariat or as soon as possible thereafter. Notice for a challenge inspection shall be provided at any appropriate time determined by the United States National Authority. Notices may be posted prominently at the plant, plant site, or other facility or location if the United States is unable to provide actual written notice to the owner, operator, or agent in charge of the premises.

(3) CONTENT OF NOTICE.—

(A) IN GENERAL.—The notice under paragraph (1) shall include all appropriate information supplied by the Technical Secretariat to the United States National Authority concerning—

(i) the type of inspection;

(ii) the basis for the selection of the plant, plant site, or other facility or location for the type of inspection sought;

(iii) the time and date that the inspection will begin and the period covered by the inspection; and

(iv) the names and titles of the inspectors.

(B) SPECIAL RULE FOR CHALLENGE INSPECTIONS.—In the case of a challenge inspection pursuant to Article IX of the Convention, the notice shall also include all appropriate evidence or reasons provided by the requesting state party to the Convention for seeking the inspection.

(4) SEPARATE NOTICES REQUIRED.—A separate notice shall be provided for each inspection, except that a notice shall not be required for each entry made during the period covered by the inspection.

(c) CREDENTIALS.—The head of the inspection team of the Technical Secretariat and the accompanying employees of the Federal government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the premises before the inspection is commenced.

(d) TIMEFRAME FOR INSPECTIONS.—Consistent with the provisions of the Convention, each inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(e) SCOPE.—

(1) IN GENERAL.—Except as provided in a warrant issued under section 305 or a facility agreement entered into under section 302, an inspection conducted under this title may extend to all things within the premises inspected (including records, files, papers, processes, controls, structures and vehicles) related to whether the requirements of the Convention applicable to such premises have been complied with.

(2) EXCEPTION.—Unless required by the Convention, no inspection under this title shall extend to—

(A) financial data;

(B) sales and marketing data (other than shipment data);

(C) pricing data;

(D) personnel data;

(E) research data;

(F) patent data;

(G) data maintained for compliance with environmental or occupational health and safety regulations; or

(H) personnel and vehicles entering and personnel and personal passenger vehicles exiting the facility.

(f) SAMPLING AND SAFETY.—

(1) IN GENERAL.—The Director of the United States National Authority is authorized to require the provision of samples to a member of the inspection team of the Technical Secretariat in accordance with the provisions of the Convention. The owner or the operator, occupant or agent in charge of the premises to be inspected shall determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present. No sample collected in the United States pursuant to an inspection permitted by this Act may be transferred for analysis to any laboratory outside the territory of the United States.

(2) COMPLIANCE WITH REGULATIONS.—In carrying out their activities, members of the inspection team of the Technical Secretariat and representatives of agencies or departments accompanying the inspection team shall observe safety regulations established at the premises to be inspected, including those for protection of controlled environments within a facility and for personal safety.

(g) COORDINATION.—The appropriate representatives of the United States, as designated, if present, shall assist the owner and the operator, occupant or agent in charge of the premises to be inspected in interacting with the members of the inspection team of the Technical Secretariat.

SEC. 305. [22 U.S.C. 6725] WARRANTS.

(a) IN GENERAL.—The United States Government shall seek the consent of the owner or the operator, occupant, or agent in charge of the premises to be inspected prior to any inspection referred to in section 304(a). If consent is obtained, a warrant is not required for the inspection. The owner or the operator, occupant, or agent in charge of the premises to be inspected may withhold consent for any reason or no reason. After providing notification pursuant to subsection (b), the United States Government may seek a search warrant from a United States magistrate judge. Proceedings regarding the issuance of a search warrant shall be conducted ex parte, unless otherwise requested by the United States Government.

(b) ROUTINE INSPECTIONS.—

(1) OBTAINING ADMINISTRATIVE SEARCH WARRANTS.—For any routine inspection conducted on the territory of the United States pursuant to Article VI of the Convention, where consent has been withheld, the United States Government shall first obtain an administrative search warrant from a judge of the

United States. The United States Government shall provide to the judge of the United States all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought. The United States Government shall also provide any other appropriate information available to it relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection.

(2) CONTENT OF AFFIDAVITS FOR ADMINISTRATIVE SEARCH WARRANTS.—The judge of the United States shall promptly issue a warrant authorizing the requested inspection upon an affidavit submitted by the United States Government showing that—

(A) the Chemical Weapons Convention is in force for the United States;

(B) the plant site, plant, or other facility or location sought to be inspected is required to report data under title IV of this Act and is subject to routine inspection under the Convention;

(C) the purpose of the inspection is—

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, to verify that the facility is not used to produce any Schedule 1 chemical agent except for declared chemicals; quantities of Schedule 1 chemicals produced, processed, or consumed are correctly declared and consistent with needs for the declared purpose; and Schedule 1 chemicals are not diverted or used for other purposes;

(ii) in the case of any facility related to Schedule 2 chemical agents, to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in data declarations; and

(iii) in the case of any facility related to Schedule 3 chemical agents and any other chemical production facility, to verify that the activities of the facility are consistent with the information provided in data declarations;

(D) the items, documents, and areas to be searched and seized;

(E) in the case of a facility related to Schedule 2 or Schedule 3 chemical agents or unscheduled discrete organic chemicals, the plant site has not been subject to more than 1 routine inspection in the current calendar year, and, in the case of facilities related to Schedule 3 chemical agents or unscheduled discrete organic chemicals, the inspection will not cause the number of routine inspections in the United States to exceed 20 in a calendar year;

(F) the selection of the site was made in accordance with procedures established under the Convention and, in particular—

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, the intensity, duration, timing, and mode of the requested inspection is based on the risk to the object and purpose of the Convention by the quantities of chemical produced, the characteristics of the facility and the nature of activities carried out at the facility, and the requested inspection, when considered with previous such inspections of the facility undertaken in the current calendar year, shall not exceed the number reasonably required based on the risk to the object and purpose of the Convention as described above;

(ii) in the case of any facility related to Schedule 2 chemical agents, the Technical Secretariat gave due consideration to the risk to the object and purpose of the Convention posed by the relevant chemical, the characteristics of the plant site and the nature of activities carried out there, taking into account the respective facility agreement as well as the results of the initial inspections and subsequent inspections; and

(iii) in the case of any facility related to Schedule 3 chemical agents or unscheduled discrete organic chemicals, the facility was selected randomly by the Technical Secretariat using appropriate mechanisms, such as specifically designed computer software, on the basis of two weighting factors: (I) equitable geographical distribution of inspections; and (II) the information on the declared sites available to the Technical Secretariat, related to the relevant chemical, the characteristics of the plant site, and the nature of activities carried out there;

(G) the earliest commencement and latest closing dates and times of the inspection; and

(H) the duration of inspection will not exceed time limits specified in the Convention unless agreed by the owner, operator, or agent in charge of the plant.

(3) CONTENT OF WARRANTS.—A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition to the requirements for a warrant issued under this paragraph, each warrant shall contain, if known, the identities of the representatives of the Technical Secretariat conducting the inspection and the observers of the inspection and, if applicable, the identities of the representatives of agencies or departments of the United States accompanying those representatives.

(4) CHALLENGE INSPECTIONS.—

(A) CRIMINAL SEARCH WARRANT.—For any challenge inspection conducted on the territory of the United States pursuant to Article IX of the Chemical Weapons Convention, where consent has been withheld, the United States Government shall first obtain from a judge of the United States a criminal search warrant based upon probable cause, supported by oath or affirmation, and describing

with particularity the place to be searched and the person or things to be seized.

(B) INFORMATION PROVIDED.—The United States Government shall provide to the judge of the United States—

(i) all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought;

(ii) any other appropriate information relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection;

(iii) information concerning—

(I) the duration and scope of the inspection;

(II) areas to be inspected;

(III) records and data to be reviewed; and

(IV) samples to be taken;

(iv) appropriate evidence or reasons provided by the requesting state party for the inspection;

(v) any other evidence showing probable cause to believe that a violation of this Act has occurred or is occurring; and

(vi) the identities of the representatives of the Technical Secretariat on the inspection team and the Federal Government employees accompanying the inspection team.

(C) CONTENT OF WARRANT.—The warrant shall specify—

(i) the type of inspection authorized;

(ii) the purpose of the inspection;

(iii) the type of plant site, plant, or other facility or location to be inspected;

(iv) the areas of the plant site, plant, or other facility or location to be inspected;

(v) the items, documents, data, equipment, and computers that may be inspected or seized;

(vi) samples that may be taken;

(vii) the earliest commencement and latest concluding dates and times of the inspection; and

(viii) the identities of the representatives of the Technical Secretariat on the inspection teams and the Federal Government employees accompanying the inspection team.

SEC. 306. [22 U.S.C. 6726] PROHIBITED ACTS RELATING TO INSPECTIONS.

It shall be unlawful for any person willfully to fail or refuse to permit entry or inspection, or to disrupt, delay, or otherwise impede an inspection, authorized by this Act.

SEC. 307. [22 U.S.C. 6727] NATIONAL SECURITY EXCEPTION.

Consistent with the objective of eliminating chemical weapons, the President may deny a request to inspect any facility in the United States in cases where the President determines that the in-

spection may pose a threat to the national security interests of the United States.

SEC. 308. PROTECTION OF CONSTITUTIONAL RIGHTS OF CONTRACTORS.

[Omitted-Amendments]

SEC. 309. [22 U.S.C. 6728] ANNUAL REPORT ON INSPECTIONS.

(a) IN GENERAL.—Not later than one year after the date of enactment of this Act, and annually thereafter, the President shall submit a report in classified and unclassified form to the appropriate congressional committees on inspections made under the Convention during the preceding year.

(b) CONTENT OF REPORTS.—Each report shall contain the following information for the reporting period:

(1) The name of each company or entity subject to the jurisdiction of the United States reporting data pursuant to title IV of this Act.

(2) The number of inspections under the Convention conducted on the territory of the United States.

(3) The number and identity of inspectors conducting any inspection described in paragraph (2) and the number of inspectors barred from inspection by the United States.

(4) The cost to the United States for each inspection described in paragraph (2).

(5) The total costs borne by United States business firms in the course of inspections described in paragraph (2).

(6) A description of the circumstances surrounding inspections described in paragraph (2), including instances of possible industrial espionage and misconduct of inspectors.

(7) The identity of parties claiming loss of trade secrets, the circumstances surrounding those losses, and the efforts taken by the United States Government to redress those losses.

(8) A description of instances where inspections under the Convention outside the United States have been disrupted or delayed.

(c) DEFINITION.—The term "appropriate congressional committees" means the Committee on the Judiciary, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 310. [22 U.S.C. 6729] UNITED STATES ASSISTANCE IN INSPECTIONS AT PRIVATE FACILITIES.

(a) ASSISTANCE IN PREPARATION FOR INSPECTIONS.—At the request of an owner of a facility not owned or operated by the United States Government, or contracted for use by or for the United States Government, the Secretary of Defense may assist the facility to prepare the facility for possible inspections pursuant to the Convention.

(b) REIMBURSEMENT REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the owner of a facility provided assistance under subsection (a)

shall reimburse the Secretary for the costs incurred by the Secretary in providing the assistance.

(2) EXCEPTION.—In the case of assistance provided under subsection (a) to a facility owned by a person described in subsection (c), the United States National Authority shall reimburse the Secretary for the costs incurred by the Secretary in providing the assistance.

(c) OWNERS COVERED BY UNITED STATES NATIONAL AUTHORITY REIMBURSEMENTS.—Subsection (b)(2) applies in the case of assistance provided to the following:

(1) SMALL BUSINESS CONCERNS.—A small business concern as defined in section 3 of the Small Business Act.

(2) DOMESTIC PRODUCERS OF SCHEDULE 3 OR UNSCHEDULED DISCRETE ORGANIC CHEMICALS.—Any person located in the United States that—

(A) does not possess, produce, process, consume, import, or export any Schedule 1 or Schedule 2 chemical; and

(B) in the calendar year preceding the year in which the assistance is to be provided, produced—

(i) more than 30 metric tons of Schedule 3 or unscheduled discrete organic chemicals that contain phosphorous, sulfur, or fluorine; or

(ii) more than 200 metric tons of unscheduled discrete organic chemicals.

TITLE IV—REPORTS

SEC. 401. [22 U.S.C. 6741] REPORTS REQUIRED BY THE UNITED STATES NATIONAL AUTHORITY.

(a) REGULATIONS ON RECORDKEEPING.—

(1) REQUIREMENTS.—The United States National Authority shall ensure that regulations are prescribed that require each person located in the United States who produces, processes, consumes, exports, or imports, or proposes to produce, process, consume, export, or import, a chemical substance that is subject to the Convention to—

(A) maintain and permit access to records related to that production, processing, consumption, export, or import of such substance; and

(B) submit to the Director of the United States National Authority such reports as the United States National Authority may reasonably require to provide to the Organization, pursuant to subparagraph 1(a) of the Annex on Confidentiality of the Convention, the minimum amount of information and data necessary for the timely and efficient conduct by the Organization of its responsibilities under the Convention.

(2) RULEMAKING.—The Director of the United States National Authority shall ensure that regulations pursuant to this section are prescribed expeditiously.

(b) COORDINATION.—

(1) AVOIDANCE OF DUPLICATION.—To the extent feasible, the United States Government shall not require the submission of any report that is unnecessary or duplicative of any report required by or under any other law. The head of each Fed-

eral agency shall coordinate the actions of that agency with the heads of the other Federal agencies in order to avoid the imposition of duplicative reporting requirements under this Act or any other law.

(2) DEFINITION.—As used in paragraph (1), the term "Federal agency" has the meaning given the term "agency" in section 551(1) of title 5, United States Code.

SEC. 402. [22 U.S.C. 6742] PROHIBITION RELATING TO LOW CONCENTRATIONS OF SCHEDULE 2 AND 3 CHEMICALS.

(a) PROHIBITION.—Notwithstanding any other provision of this Act, no person located in the United States shall be required to report on, or to submit to, any routine inspection conducted for the purpose of verifying the production, possession, consumption, exportation, importation, or proposed production, possession, consumption, exportation, or importation of any substance that contains less than—

(1) 10 percent concentration of a Schedule 2 chemical; or

(2) 80 percent concentration of a Schedule 3 chemical.

(b) STANDARD FOR MEASUREMENT OF CONCENTRATION.—The percent concentration of a chemical in a substance shall be measured on the basis of volume or total weight, which measurement yields the lesser percent.

SEC. 403. [22 U.S.C. 6743] PROHIBITION RELATING TO UNSCHEDULED DISCRETE ORGANIC CHEMICALS AND COINCIDENTAL BYPRODUCTS IN WASTE STREAMS.

(a) PROHIBITION.—Notwithstanding any other provision of this Act, no person located in the United States shall be required to report on, or to submit to, any routine inspection conducted for the purpose of verifying the production, possession, consumption, exportation, importation, or proposed production, possession, consumption, exportation, or importation of any substance that is—

(1) an unscheduled discrete organic chemical; and

(2) a coincidental byproduct of a manufacturing or production process that is not isolated or captured for use or sale during the process and is routed to, or escapes, from the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream.

SEC. 404. [22 U.S.C. 6744] CONFIDENTIALITY OF INFORMATION.

(a) FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN CONVENTION INFORMATION.—Except as provided in subsection (b) or (c), any confidential business information, as defined in section 103(g), reported to, or otherwise acquired by, the United States Government under this Act or under the Convention shall not be disclosed under section 552(a) of title 5, United States Code.

(b) EXCEPTIONS.—

(1) INFORMATION FOR THE TECHNICAL SECRETARIAT.—Information shall be disclosed or otherwise provided to the Technical Secretariat or other states parties to the Chemical Weapons Convention in accordance with the Convention, in particular, the provisions of the Annex on the Protection of Confidential Information.

(2) INFORMATION FOR CONGRESS.—Information shall be made available to any committee or subcommittee of Congress

with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee, except that no such committee or subcommittee, and no member and no staff member of such committee or subcommittee, shall disclose such information or material except as otherwise required or authorized by law.

(3) INFORMATION FOR ENFORCEMENT ACTIONS.—Information shall be disclosed to other Federal agencies for enforcement of this Act or any other law, and shall be disclosed or otherwise provided when relevant in any proceeding under this Act or any other law, except that disclosure or provision in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

(c) INFORMATION DISCLOSED IN THE NATIONAL INTEREST.—

(1) AUTHORITY.—The United States Government shall disclose any information reported to, or otherwise required by the United States Government under this Act or the Convention, including categories of such information, that it determines is in the national interest to disclose and may specify the form in which such information is to be disclosed.

(2) NOTICE OF DISCLOSURE.—

(A) REQUIREMENT.—If any Department or agency of the United States Government proposes pursuant to paragraph (1) to publish or disclose or otherwise provide information exempt from disclosure under subsection (a), the United States National Authority shall, unless contrary to national security or law enforcement needs, provide notice of intent to disclose the information—

(i) to the person that submitted such information; and

(ii) in the case of information about a person received from another source, to the person to whom that information pertains.

The information may not be disclosed until the expiration of 30 days after notice under this paragraph has been provided.

(B) PROCEEDINGS ON OBJECTIONS.—In the event that the person to which the information pertains objects to the disclosure, the agency shall promptly review the grounds for each objection of the person and shall afford the objecting person a hearing for the purpose of presenting the objections to the disclosure. Not later than 10 days before the scheduled or rescheduled date for the disclosure, the United States National Authority shall notify such person regarding whether such disclosure will occur notwithstanding the objections.

(d) CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.—Any officer or employee of the United States, and any former officer or employee of the United States, who by reason of such employment or official position has obtained possession of, or has access to, information the disclosure or other provision of which is prohibited by subsection (a), and who, knowing that disclosure or provision of such information is prohibited by such subsection, willfully dis-

closes or otherwise provides the information in any manner to any person (including any person located outside the territory of the United States) not authorized to receive it, shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

(e) CRIMINAL FORFEITURE.—The property of any person who violates subsection (d) shall be subject to forfeiture to the United States in the same manner and to the same extent as is provided in section 229C of title 18, United States Code, as added by this Act.

(f) INTERNATIONAL INSPECTORS.—The provisions of this section shall also apply to employees of the Technical Secretariat.

SEC. 405. [22 U.S.C. 6745] RECORDKEEPING VIOLATIONS.

It shall be unlawful for any person willfully to fail or refuse—

(1) to establish or maintain any record required by this Act or any regulation prescribed under this Act;

(2) to submit any report, notice, or other information to the United States Government in accordance with this Act or any regulation prescribed under this Act; or

(3) to permit access to or copying of any record that is exempt from disclosure under this Act or any regulation prescribed under this Act.

TITLE V—ENFORCEMENT

SEC. 501. [22 U.S.C. 6761] PENALTIES.

(a) CIVIL.—

(1) PENALTY AMOUNTS.—

(A) PROHIBITED ACTS RELATING TO INSPECTIONS.—Any person that is determined, in accordance with paragraph (2), to have violated section 306 of this Act shall be required by order to pay a civil penalty in an amount not to exceed $25,000 for each such violation. For purposes of this paragraph, each day such a violation of section 306 continues shall constitute a separate violation of that section.

(B) RECORDKEEPING VIOLATIONS.—Any person that is determined, in accordance with paragraph (2), to have violated section 405 of this Act shall be required by order to pay a civil penalty in an amount not to exceed $5,000 for each such violation.

(2) HEARING.—

(A) IN GENERAL.—Before imposing an order described in paragraph (1) against a person under this subsection for a violation of section 306 or 405, the Secretary of State shall provide the person or entity with notice and, upon request made within 15 days of the date of the notice, a hearing respecting the violation.

(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the Secretary of State's imposition

of the order shall constitute a final and unappealable order.

(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated section 306 or 405, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (1).

(D) FACTORS FOR DETERMINATION OF PENALTY AMOUNTS.—In determining the amount of any civil penalty, the administrative law judge shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(3) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the head of the United States National Authority unless, within 30 days, the head of the United States National Authority modifies or vacates the decision and order, with or without conditions, in which case the decision and order of the head of the United States National Authority shall become a final order under this subsection.

(4) OFFSETS.—The amount of the civil penalty under a final order of the United States National Authority may be deducted from any sums owed by the United States to the person.

(5) JUDICIAL REVIEW.—A person adversely affected by a final order respecting an assessment may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business.

(6) ENFORCEMENT OF ORDERS.—If a person fails to comply with a final order issued under this subsection against the person or entity—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (5), or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the United States National Authority,

the Secretary of State shall file a suit to seek compliance with the order in any appropriate district court of the United States, plus interest at currently prevailing rates calculated from the date of expiration of the 30-day period referred to in paragraph (5) or the date of such final judgment, as the case may be. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly violates any provision of section 306 or 405 of this Act, shall, in addition to or in lieu

of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, United States Code, imprisoned for not more than one year, or both.

SEC. 502. [22 U.S.C. 6762] SPECIFIC ENFORCEMENT.

(a) JURISDICTION.—The district courts of the United States shall have jurisdiction over civil actions to—

(1) restrain any violation of section 306 or 405 of this Act; and

(2) compel the taking of any action required by or under this Act or the Convention.

(b) CIVIL ACTIONS.—

(1) IN GENERAL.—A civil action described in subsection (a) may be brought—

(A) in the case of a civil action described in subsection (a)(1), in the United States district court for the judicial district in which any act, omission, or transaction constituting a violation of section 306 or 405 occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in subsection (a)(2), in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) SERVICE OF PROCESS.—In any such civil action process may be served on a defendant wherever the defendant may reside or may be found, whether the defendant resides or may be found within the United States or elsewhere.

SEC. 503. [22 U.S.C. 6763] EXPEDITED JUDICIAL REVIEW.

(a) CIVIL ACTION.—Any person or entity subject to a search under this Act may file a civil action challenging the constitutionality of any provision of this Act. Notwithstanding any other provision of law, during the full calendar year of, and the two full calendar years following, the enactment of this Act, the district court shall accord such a case a priority in its disposition ahead of all other civil actions except for actions challenging the legality and conditions of confinement.

(b) EN BANC REVIEW.—Notwithstanding any other provision of law, during the full calendar year of, and the two full calendar years following, the enactment of this Act, any appeal from a final order entered by a district court in an action brought under subsection (a) shall be heard promptly by the full Court of Appeals sitting en banc.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. REPEAL.

[Omitted-Amendment]

SEC. 602. [22 U.S.C. 6771] PROHIBITION.

(a) IN GENERAL.—Neither the Secretary of Defense nor any other officer or employee of the United States may, directly or by contract—

(1) conduct any test or experiment involving the use of any chemical or biological agent on a civilian population; or

(2) use human subjects for the testing of chemical or biological agents.

(b) CONSTRUCTION.—Nothing in subsection (a) may be construed to prohibit actions carried out for purposes not prohibited by this Act (as defined in section 3(8)).

(c) BIOLOGICAL AGENT DEFINED.—In this section, the term "biological agent" means any micro-organism (including bacteria, viruses, fungi, rickettsiae or protozoa), pathogen, or infectious substance, or any naturally occurring, bio-engineered or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, capable of causing—

(1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) deterioration of food, water, equipment, supplies, or materials of any kind; or

(3) deleterious alteration of the environment.

SEC. 603. BANKRUPTCY ACTIONS.

[Omitted-Amendments**]**

---

3. ARMS CONTROL MATTERS

a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(Subtitle E of title X, as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle E—Strategic Forces

SEC. 1041. [10 U.S.C. 118 note] REVISED NUCLEAR POSTURE REVIEW.

(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify United States nuclear deterrence policy and strategy for the near term, the Secretary of Defense shall conduct a comprehensive review of the nuclear posture of the United States for the next 5 to 10 years. The Secretary shall conduct the review in consultation with the Secretary of Energy.

(b) ELEMENTS OF REVIEW.—The nuclear posture review shall include the following elements:

(1) The role of nuclear forces in United States military strategy, planning, and programming.

(2) The policy requirements and objectives for the United States to maintain a safe, reliable, and credible nuclear deterrence posture.

(3) The relationship among United States nuclear deterrence policy, targeting strategy, and arms control objectives.

(4) The levels and composition of the nuclear delivery systems that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying existing systems.

(5) The nuclear weapons complex that will be required for implementing the United States national and military strategy, including any plans to modernize or modify the complex.

(6) The active and inactive nuclear weapons stockpile that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying warheads.

(c) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress, in unclassified and classified forms as necessary, a report on the results of the nuclear posture review conducted under this section. The report shall be submitted concurrently with the Quadrennial Defense Review report due in December 2001.

(d) SENSE OF CONGRESS.—It is the sense of Congress that the nuclear posture review conducted under this section should be used

as the basis for establishing future United States arms control objectives and negotiating positions.

SEC. 1042. PLAN FOR THE LONG-TERM SUSTAINMENT AND MODERNIZATION OF UNITED STATES STRATEGIC NUCLEAR FORCES.

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense, in consultation with the Secretary of Energy, shall develop a long-range plan for the sustainment and modernization of United States strategic nuclear forces to counter emerging threats and satisfy the evolving requirements of deterrence.

(b) ELEMENTS OF PLAN.—The plan specified under subsection (a) shall include the Secretary's plans, if any, for the sustainment and modernization of the following:

(1) Land-based and sea-based strategic ballistic missiles, including any plans for developing replacements for the Minuteman III intercontinental ballistic missile and the Trident II sea-launched ballistic missile and plans for common ballistic missile technology development.

(2) Strategic nuclear bombers, including any plans for a B–2 follow-on, a B–52 replacement, and any new air-launched weapon systems.

(3) Appropriate warheads to outfit the strategic nuclear delivery systems referred to in paragraphs (1) and (2) to satisfy evolving military requirements.

(c) SUBMITTAL OF PLAN.—The plan specified under subsection (a) shall be submitted to Congress not later than April 15, 2001. The plan shall be submitted in unclassified and classified forms, as necessary.

SEC. 1043. MODIFICATION OF SCOPE OF WAIVER AUTHORITY FOR LIMITATION ON RETIREMENT OR DISMANTLEMENT OF STRATEGIC NUCLEAR DELIVERY SYSTEMS.

[Omitted-Amendment]

SEC. 1044. REPORT ON THE DEFEAT OF HARDENED AND DEEPLY BURIED TARGETS.

(a) STUDY.—The Secretary of Defense shall, in conjunction with the Secretary of Energy, conduct a study relating to the defeat of hardened and deeply buried targets. Under the study, the Secretaries shall—

(1) review—

(A) the requirements of the United States to defeat hardened and deeply buried targets and stockpiles of chemical and biological agents and related capabilities; and

(B) current and future plans to meet those requirements;

(2) determine if those plans adequately address all such requirements;

(3) identify potential future hardened and deeply buried targets and other related targets;

(4) determine what resources and research and development efforts are needed to defeat the targets identified under paragraph (3) as well as other requirements to defeat stockpiles of chemical and biological agents and related capabilities;

(5) assess both current and future options to defeat hardened and deeply buried targets as well as concepts to defeat stockpiles of chemical and biological agents and related capabilities; and

(6) determine the capability and cost of each option assessed under paragraph (5).

(b) CONDUCT OF ASSESSMENTS.—In conducting the study under subsection (a), the Secretaries may, in order to perform the assessments required by paragraph (5) of that subsection, conduct any limited research and development that may be necessary to perform those assessments.

(c) REPORT.—(1) Not later than July 1, 2001, 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 results of the study conducted under subsection (a). The report shall be prepared in conjunction with the Secretary of Energy.

(2) The report under paragraph (1) shall be submitted in unclassified form, together with a classified annex if necessary.

SEC. 1045. SENSE OF CONGRESS ON THE MAINTENANCE OF THE STRATEGIC NUCLEAR TRIAD.

It is the sense of Congress that, in light of the potential for further arms control agreements with the Russian Federation limiting strategic forces—

(1) it is in the national interest of the United States to maintain a robust and balanced triad of strategic nuclear delivery vehicles, including (A) long-range bombers, (B) land-based intercontinental ballistic missiles (ICBMs), and (C) ballistic missile submarines; and

(2) reductions to United States conventional bomber capability are not in the national interest of the United States.

---

b. Nuclear Weapons Stockpile Life Extension Program

(Section 3133 of Public Law 106–65, approved Oct. 5, 1999)

SEC. 3133. [42 U.S.C. 2121 note] NUCLEAR WEAPONS STOCKPILE LIFE EXTENSION PROGRAM.

(a) PROGRAM REQUIRED.—The Secretary of Energy shall, in consultation with the Secretary of Defense, carry out a program to provide for the extension of the effective life of the weapons in the nuclear weapons stockpile.

(b) ADMINISTRATIVE RESPONSIBILITY FOR PROGRAM.—(1) The program under subsection (a) shall be carried out through the element of the Department of Energy with responsibility for defense programs.

(2) For each budget submitted by the President to Congress under section 1105 of title 31, United States Code, the amounts requested for the program shall be clearly identified in the budget justification materials submitted to Congress in support of that budget.

(c) PROGRAM PLAN.—As part of the program under subsection (a), the Secretary shall develop a long-term plan for the extension

of the effective life of the weapons in the nuclear weapons stockpile. The plan shall include the following:

(1) Mechanisms to provide for the remanufacture, refurbishment, and modernization of each weapon design designated by the Secretary for inclusion in the enduring nuclear weapons stockpile as of the date of the enactment of this Act.

(2) Mechanisms to expedite the collection of information necessary for carrying out the program, including information relating to the aging of materials and components, new manufacturing techniques, and the replacement or substitution of materials.

(3) Mechanisms to ensure the appropriate assignment of roles and missions for each nuclear weapons laboratory and production plant of the Department, including mechanisms for allocation of workload, mechanisms to ensure the carrying out of appropriate modernization activities, and mechanisms to ensure the retention of skilled personnel.

(4) Mechanisms for allocating funds for activities under the program, including allocations of funds by weapon type and facility.

(5) An identification of the funds needed, in the current fiscal year and in each of the next five fiscal years, to carry out the program.

(d) ANNUAL SUBMITTAL OF PLAN.—(1) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the plan developed under subsection (c) not later than January 1, 2000. The plan shall contain the maximum level of detail practicable.

(2) The Secretary shall submit to the committees referred to in paragraph (1) each year after 2000, at the same time as the submission of the budget for the fiscal year beginning in such year under section 1105 of title 31, United States Code, an update of the plan submitted under paragraph (1). Each update shall contain the same level of detail as the plan submitted under paragraph (1).

(e) GAO ASSESSMENT.—Not later than 30 days after the submission of the plan under subsection (d)(1) or any update of the plan under subsection (d)(2), the Comptroller General shall submit to the committees referred to in subsection (d)(1) an assessment of whether the program can be carried out under the plan or the update (as applicable)—

(1) in the current fiscal year, given the budget for that fiscal year; and

(2) in future fiscal years.

(f) SENSE OF CONGRESS REGARDING FUNDING OF PROGRAM.—It is the sense of Congress that the President should include in each budget for a fiscal year submitted to Congress under section 1105 of title 31, United States Code, sufficient funds to carry out in the fiscal year covered by such budget the activities under the program under subsection (a) that are specified in the most current version of the plan for the program under this section.

c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE XV—MATTERS RELATING TO ARMS CONTROL, EXPORT CONTROLS, AND COUNTER-PROLIFERATION

Subtitle A—Arms Control Matters

* * * * * * *

SEC. 1502. [22 U.S.C. 2593a note] TRANSMISSION OF EXECUTIVE BRANCH REPORTS PROVIDING CONGRESS WITH CLASSIFIED SUMMARIES OF ARMS CONTROL DEVELOPMENTS.

(a) REPORTING REQUIREMENT.—The Director of the Arms Control and Disarmament Agency (or the Secretary of State, if the Arms Control and Disarmament Agency becomes an element of the Department of State) shall transmit to the Committee on Armed Services of the House of Representatives on a periodic basis reports containing classified summaries of arms control developments.

(b) CONTENTS OF REPORTS.—The reports required by subsection (a) shall include information reflecting the activities of forums established to consider issues relating to treaty implementation and treaty compliance.

* * * * * * *

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle D—Other Matters

* * * * * * *

SEC. 3158. [42 U.S.C. 2121 note] REPORT ON STOCKPILE STEWARDSHIP CRITERIA.

(a) REQUIREMENT FOR CRITERIA.—The Secretary of Energy shall develop clear and specific criteria for judging whether the science-based tools being used by the Department of Energy for determining the safety and reliability of the nuclear weapons stockpile are performing in a manner that will provide an adequate degree of certainty that the stockpile is safe and reliable.

(b) COORDINATION WITH SECRETARY OF DEFENSE.—The Secretary of Energy, in developing the criteria required by subsection (a), shall coordinate with the Secretary of Defense.

(c) REPORT.—Not later than March 1, 2000, the Secretary of Energy 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 efforts by the Department of Energy

to develop the criteria required by subsection (a). The report shall include—

(1) a description of the information needed to determine that the nuclear weapons stockpile is safe and reliable and the relationship of the science-based tools to the collection of that information; and

(2) a description of the criteria required by subsection (a) to the extent they have been developed as of the date of the submission of the report.

SEC. 3159. [42 U.S.C. 2121 note] PANEL TO ASSESS THE RELIABILITY, SAFETY, AND SECURITY OF THE UNITED STATES NUCLEAR STOCKPILE.

(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Secretary of Energy, shall enter into a contract with a federally funded research and development center to establish a panel for the assessment of the certification process for the reliability, safety, and security of the United States nuclear stockpile.

(b) COMPOSITION AND ADMINISTRATION OF PANEL.—(1) The panel shall consist of private citizens of the United States with knowledge and expertise in the technical aspects of design, manufacture, and maintenance of nuclear weapons.

(2) The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including selection of a panel chairman.

(c) DUTIES OF PANEL.—Each year the panel shall review and assess the following:

(1) The annual certification process, including the conclusions and recommendations resulting from the process, for the safety, security, and reliability of the nuclear weapons stockpile of the United States, as carried out by the directors of the national weapons laboratories.

(2) The long-term adequacy of the process of certifying the safety, security, and reliability of the nuclear weapons stockpile of the United States.

(3) The adequacy of the criteria established by the Secretary of Energy pursuant to section 3158 for achieving the purposes for which those criteria are established.

(d) REPORT.—Not later than October 1 of each year, beginning with 1999, the panel shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report setting forth its findings and conclusions resulting from the review and assessment carried out for the year covered by the report. The report shall be submitted in classified and unclassified form.

(e) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Energy, the Department of Defense, or any of the national weapons laboratories or plants or any other Federal department or agency information that the panel considers necessary to carry out its duties.

(2) For carrying out its duties, the panel shall be provided full and timely cooperation by the Secretary of Energy, the Secretary of Defense, the Commander of United States Strategic Command, the Directors of the Los Alamos National Laboratory, the Lawrence

Livermore National Laboratory, the Sandia National Laboratories, the Savannah River Site, the Y–12 Plant, the Pantex Facility, and the Kansas City Plant, and any other official of the United States that the chairman of the panel determines as having information described in paragraph (1).

(3) The Secretary of Energy and the Secretary of Defense shall each designate at least one officer or employee of the Department of Energy and the Department of Defense, respectively, to serve as a liaison officer between the department and the panel.

(f) FUNDING.—The Secretary of Defense and the Secretary of Energy shall each contribute 50 percent of the amount of funds that are necessary for the panel to carry out its duties. Funds available for the Department of Energy for atomic energy defense activities shall be available for the Department of Energy contribution.

(g) TERMINATION OF PANEL.—The panel shall terminate three years after the date of the appointment of the member designated as chairman of the panel.

(h) INITIAL IMPLEMENTATION.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act. The panel shall convene its first meeting not later than 30 days after the date as of which all members of the panel have been appointed.

---

d. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE XIII—ARMS CONTROL AND RELATED MATTERS

* * * * * * *

SEC. 1302. LIMITATION ON RETIREMENT OR DISMANTLEMENT OF STRATEGIC NUCLEAR DELIVERY SYSTEMS.

(a) FUNDING LIMITATION.—(1) Except as provided in paragraph (2), funds available to the Department of Defense may not be obligated or expended for retiring or dismantling, or for preparing to retire or dismantle, any of the following strategic nuclear delivery systems below the specified levels:

(A) 76 B–52H bomber aircraft.

(B) 18 Trident ballistic missile submarines.

(C) 500 Minuteman III intercontinental ballistic missiles.

(D) 50 Peacekeeper intercontinental ballistic missiles.

(2) The limitation in paragraph (1)(B) shall be modified in accordance with paragraph (3) upon a certification by the President to Congress of the following:

(A) That the effectiveness of the United States strategic deterrent will not be decreased by reductions in strategic nuclear delivery systems.

(B) That the requirements of the Single Integrated Operational Plan can be met with a reduced number of strategic nuclear delivery systems.

(C) That reducing the number of strategic nuclear delivery systems will not, in the judgment of the President, provide a

disincentive for Russia to ratify the START II treaty or serve to undermine future arms control negotiations.

(D) That the United States will retain the ability to increase the delivery capacity of its strategic nuclear delivery systems should threats arise that require more substantial United States strategic forces.

(3) If the President submits the certification described in paragraph (2), then the applicable number in effect under paragraph (1)(B)—

(A) shall be 16 during the period beginning on the date on which such certification is transmitted to Congress and ending on the date specified in subparagraph (B); and

(B) shall be 14 effective as of the date that is 240 days after the date on which such certification is transmitted.

(b) WAIVER AUTHORITY.—If the START II treaty enters into force, the President may waive the application of the limitation in effect under subsection (a) to a strategic nuclear delivery system to the extent that the President determines such a waiver to be necessary in order to implement the treaty.

(c) FUNDING LIMITATION ON EARLY DEACTIVATION.—(1) If the limitation under subsection (a) ceases to apply by reason of a waiver under subsection (b), funds available to the Department of Defense may nevertheless not be obligated or expended to implement any agreement or understanding to undertake substantial early deactivation of a strategic nuclear delivery system specified in subsection (a) until 30 days after the date on which the President submits to Congress a report concerning such actions.

(2) For purposes of this subsection and subsection (d), a substantial early deactivation is an action during the fiscal year during which the START II Treaty enters into force to deactivate a substantial number of strategic nuclear delivery systems specified in subsection (a) by—

(A) removing nuclear warheads from those systems; or

(B) taking other steps to remove those systems from combat status.

(3) A report under this subsection shall include the following:

(A) The text of any understanding or agreement between the United States and the Russian Federation concerning substantial early deactivation of strategic nuclear delivery systems under the START II Treaty.

(B) The plan of the Department of Defense for implementing the agreement.

(C) An assessment of the Secretary of Defense of the adequacy of the provisions contained in the agreement for monitoring and verifying compliance of Russia with the terms of the agreement and, based upon that assessment, the determination of the President specifically as to whether the procedures for monitoring and verification of compliance by Russia with the terms of the agreement are adequate or inadequate.

(D) A determination by the President as to whether the deactivations to occur under the agreement will be carried out in a symmetrical, reciprocal, or equivalent manner and whether the agreement will require early deactivations of stra-

tegic forces by the United States to be carried out substantially more rapidly than deactivations of strategic forces by Russia.

(E) An assessment by the President of the effect of the proposed early deactivation on the stability of the strategic balance and relative strategic nuclear capabilities of the United States and the Russian Federation at various stages during deactivation and upon completion, including a determination by the President specifically as to whether the proposed early deactivations will adversely affect strategic stability.

(d) FURTHER LIMITATION ON STRATEGIC FORCE REDUCTIONS.—(1) Amounts available to the Department of Defense to implement an agreement that results in a substantial early deactivation of strategic forces may not be obligated for that purpose if in the report under subsection (c)(3) the President determines any of the following:

(A) That procedures for monitoring and verification of compliance by Russia with the terms of the agreement are inadequate.

(B) That the agreement will require early deactivations of strategic forces by the United States to be carried out substantially more rapidly than deactivations of strategic forces by Russia.

(C) That the proposed early deactivations will adversely affect strategic stability.

(2) The limitation in paragraph (1), if effective by reason of a determination by the President described in paragraph (1)(B), shall cease to apply 30 days after the date on which the President notifies Congress that the early deactivations under the agreement are in the national interest of the United States.

(e) CONTINGENCY PLAN FOR SUSTAINMENT OF SYSTEMS.—(1) Not later then February 15, 1998, the Secretary of Defense shall submit to Congress a plan for the sustainment beyond October 1, 1999, of United States strategic nuclear delivery systems and alternative Strategic Arms Reduction Treaty force structures in the event that a strategic arms reduction agreement subsequent to the Strategic Arms Reduction Treaty does not enter into force before 2004.

(2) The plan shall include a discussion of the following matters:

(A) The actions that are necessary to sustain the United States strategic nuclear delivery systems, distinguishing between the actions that are planned for and funded in the future-years defense program and the actions that are not planned for and funded in the future-years defense program.

(B) The funding necessary to implement the plan, indicating the extent to which the necessary funding is provided for in the future-years defense program and the extent to which the necessary funding is not provided for in the future-years defense program.

(f) START TREATIES DEFINED.—In this section:

(1) The term "Strategic Arms Reduction Treaty" means the Treaty Between the United States of America and the United Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (START), signed at Moscow on July 31, 1991, including related annexes on agreed

statements and definitions, protocols, and memorandum of understanding.

(2) The term "START II Treaty" means the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms, signed at Moscow on January 3, 1993, including the following protocols and memorandum of understanding, all such documents being integral parts of and collectively referred to as the "START II Treaty" (contained in Treaty Document 103–1):

(A) The Protocol on Procedures Governing Elimination of Heavy ICBMs and on Procedures Governing Conversion of Silo Launchers of Heavy ICBMs Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Elimination and Conversion Protocol").

(B) The Protocol on Exhibitions and Inspections of Heavy Bombers Relating to the Treaty Between the United States and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Exhibitions and Inspections Protocol").

(C) The Memorandum of Understanding on Warhead Attribution and Heavy Bomber Data Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Memorandum on Attribution").

* * * * * * *

SEC. 1305. [42 U.S.C. 7274p] ADVICE TO THE PRESIDENT AND CONGRESS REGARDING THE SAFETY, SECURITY, AND RELIABILITY OF UNITED STATES NUCLEAR WEAPONS STOCKPILE.

(a) FINDINGS.—Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102–377; 42 U.S.C. 2121 note) from conducting underground nuclear tests "unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted".

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note) requires the Secretary of Energy to "establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the

event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.".

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth "any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy".

(6) President Clinton declared in July 1993 that "to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons". This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 42 U.S.C. 2121 note) also requires that the Secretary of Energy establish a "stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons".

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear testing, in the future they will provide, under the Department of Energy's stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274o) requires that the directors of the nuclear weapons laboratories and the nuclear weapons production plants submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional defense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed "the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban".

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being "advised by the Nuclear Weapons Council, the Directors of DOE's nuclear weapons laboratories, and the Commander of United States Strategic Command", to provide the President with the information regarding the certification referred to in paragraph (10).

(12) The Joint Nuclear Weapons Council established by section 179 of title 10, United States Code, is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including "considering safety, security, and control issues for existing weapons". The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) POLICY.—

(1) IN GENERAL.—It is the policy of the United States—

(A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and

(B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) NUCLEAR WEAPONS STOCKPILE.—It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the nuclear weapons laboratories and nuclear weapons production plants.

(3) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c) ADDITION OF PRESIDENT TO RECIPIENTS OF REPORTS BY HEADS OF LABORATORIES AND PLANTS.—[Omitted—Amendment]

(d) TEN-DAY TIME LIMIT FOR TRANSMITTAL OF REPORT.—[Omitted—Amendment]

(e) ADVICE AND OPINIONS REGARDING NUCLEAR WEAPONS STOCKPILE.—In addition to a director of a nuclear weapons laboratory or a nuclear weapons production plant (under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 42 U.S.C. 7274o)), any member of the Joint Nu-

clear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) EXPRESSION OF INDIVIDUAL VIEWS.—A representative of the President may not take any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(g) DEFINITIONS.—In this section:

(1) The term "representative of the President" means the following:

(A) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(B) Any member of the National Security Council.

(C) Any member of the Joint Chiefs of Staff.

(D) Any official of the Office of Management and Budget.

(2) The term "nuclear weapons laboratory" means any of the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(3) The term "nuclear weapons production plant" means any of the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y–12 Plant, Oak Ridge, Tennessee.

* * * * * * *

SEC. 1309. [10 U.S.C. 113 note] ANNUAL REPORT ON MORATORIUM ON USE BY ARMED FORCES OF ANTIPERSONNEL LANDMINES.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States has stated its support for a ban on antipersonnel landmines that is global in scope and verifiable.

(2) On May 16, 1996, the President announced that the United States, as a matter of policy, would eliminate its stockpile of non-self-destructing antipersonnel landmines, except those used for training purposes and in Korea, and that the United States would reserve the right to use self-destructing antipersonnel landmines in the event of conflict.

(3) On May 16, 1996, the President also announced that the United States would lead an effort to negotiate an international treaty permanently banning the use of all antipersonnel landmines.

(4) The United States is currently participating at the United Nations Conference on Disarmament in negotiations

aimed at achieving a global ban on the use of antipersonnel landmines.

(5) On August 18, 1997, the administration agreed to participate in international negotiations sponsored by Canada (the so-called "Ottawa process") designed to achieve a treaty that would outlaw the production, use, and sale of antipersonnel landmines.

(6) On September 17, 1997, the President announced that the United States would not sign the antipersonnel landmine treaty concluded in Oslo, Norway, by participants in the Ottawa process because the treaty would not provide a geographic exception to allow the United States to stockpile and use antipersonnel landmines in Korea or an exemption that would preserve the ability of the United States to use mixed antitank mine systems which could be used to deter an armored assault against United States forces.

(7) The President also announced a change in United States policy whereby the United States—

(A) would no longer deploy antipersonnel landmines, including self-destructing antipersonnel landmines, by 2003, except in Korea;

(B) would seek to field alternatives by that date, or by 2006 in the case of Korea;

(C) would undertake a new initiative in the United Nations Conference on Disarmament to establish a global ban on the transfer of antipersonnel landmines; and

(D) would increase its current humanitarian demining activities around the world.

(8) The President's decision would allow the continued use by United States forces of self-destructing antipersonnel landmines that are used as part of a mixed antitank mine system.

(9) Under existing law (as provided in section 580 of Public Law 104–107; 110 Stat. 751), on February 12, 1999, the United States will implement a one-year moratorium on the use of antipersonnel landmines by United States forces except along internationally recognized national borders or in demilitarized zones within a perimeter marked area that is monitored by military personnel and protected by adequate means to ensure the exclusion of civilians.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should not implement a moratorium on the use of antipersonnel landmines by United States Armed Forces in a manner that would endanger United States personnel or undermine the military effectiveness of United States Armed Forces in executing their missions; and

(2) the United States should pursue the development of alternatives to self-destructing antipersonnel landmines.

(c) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report concerning antipersonnel landmines. Each such report shall include the Secretary's description of the following:

(1) The military utility of the continued deployment and use by the United States of antipersonnel landmines.

(2) The effect of a moratorium on the production, stockpiling, and use of antipersonnel landmines on the ability of United States forces to deter and defend against attack on land by hostile forces, including on the Korean peninsula.

(3) Progress in developing and fielding systems that are effective substitutes for antipersonnel landmines, including an identification and description of the types of systems that are being developed and fielded, the costs associated with those systems, and the estimated timetable for developing and fielding those systems.

(4) The effect of a moratorium on the use of antipersonnel landmines on the military effectiveness of current antitank mine systems.

(5) The number and type of pure antipersonnel landmines that remain in the United States inventory and that are subject to elimination under the President's September 17, 1997, declaration on United States antipersonnel landmine policy.

(6) The number and type of mixed antitank mine systems that are in the United States inventory, the locations where they are deployed, and their effect on the deterrence and warfighting ability of United States Armed Forces.

(7) The effect of the elimination of pure antipersonnel landmines on the warfighting effectiveness of the United States Armed Forces.

(8) The costs already incurred and anticipated of eliminating antipersonnel landmines from the United States inventory in accordance with the policy enunciated by the President on September 17, 1997.

(9) The benefits that would result to United States military and civilian personnel from an international treaty banning the production, use, transfer, and stockpiling of antipersonnel landmines.

---

e. National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Apr. 10, 1996)

TITLE XIV—ARMS CONTROL MATTERS

* * * * * * *

SEC. 1402. REPORTS ON MORATORIUM ON USE BY ARMED FORCES OF ANTIPERSONNEL LANDMINES.

Not later than April 30 of each of 1996, 1997, and 1998, the Chairman of the Joint Chiefs of Staff shall submit to the congressional defense committees a report on the projected effects of a moratorium on the defensive use of antipersonnel mines and antitank mines by the Armed Forces. The report shall include a discussion of the following matters:

(1) The extent to which current doctrine and practices of the Armed Forces on the defensive use of antipersonnel mines and antitank mines adhere to applicable international law.

(2) The effects that a moratorium would have on the defensive use of the current United States inventory of remotely

delivered, self-destructing antitank systems, antipersonnel mines, and antitank mines.

(3) The reliability of the self-destructing antipersonnel mines and self-destructing antitank mines of the United States.

(4) The cost of clearing the antipersonnel minefields currently protecting Naval Station Guantanamo Bay, Cuba, and other United States installations.

(5) The cost of replacing antipersonnel mines in such minefields with substitute systems such as the Claymore mine, and the level of protection that would be afforded by use of such a substitute.

(6) The extent to which the defensive use of antipersonnel mines and antitank mines by the Armed Forces is a source of civilian casualties around the world, and the extent to which the United States, and the Department of Defense particularly, contributes to alleviating the illegal and indiscriminate use of such munitions.

(7) The extent to which the threat to the security of United States forces during operations other than war and combat operations would increase as a result of such a moratorium.

* * * * * * *

SEC. 1404. LIMITATION ON RETIREMENT OR DISMANTLEMENT OF STRATEGIC NUCLEAR DELIVERY SYSTEMS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, unless and until the START II Treaty enters into force, the Secretary of Defense should not take any action to retire or dismantle, or to prepare to retire or dismantle, any of the following strategic nuclear delivery systems:

(1) B–52H bomber aircraft.

(2) Trident ballistic missile submarines.

(3) Minuteman III intercontinental ballistic missiles.

(4) Peacekeeper intercontinental ballistic missiles.

(b) LIMITATION ON USE OF FUNDS.—Funds available to the Department of Defense may not be obligated or expended during fiscal year 1996 for retiring or dismantling, or for preparing to retire or dismantle, any of the strategic nuclear delivery systems specified in subsection (a).

SEC. 1405. CONGRESSIONAL FINDINGS AND SENSE OF CONGRESS CONCERNING TREATY VIOLATIONS.

(a) REAFFIRMATION OF PRIOR FINDINGS CONCERNING THE KRASNOYARSK RADAR.—Congress, noting its previous findings with respect to the large phased-array radar of the Soviet Union known as the "Krasnoyarsk radar" stated in paragraphs (1) through (4) of section 902(a) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1135) (and reaffirmed in section 1006(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1543)), hereby reaffirms those findings as follows:

(1) The 1972 Anti-Ballistic Missile Treaty prohibits each party from deploying ballistic missile early warning radars except at locations along the periphery of its national territory and oriented outward.

(2) The 1972 Anti-Ballistic Missile Treaty prohibits each party from deploying an ABM system to defend its national territory and from providing a base for any such nationwide defense.

(3) Large phased-array radars were recognized during negotiation of the Anti-Ballistic Missile Treaty as the critical long lead-time element of a nationwide defense against ballistic missiles.

(4) In 1983 the United States discovered the construction, in the interior of the Soviet Union near the town of Krasnoyarsk, of a large phased-array radar that has subsequently been judged to be for ballistic missile early warning and tracking.

(b) FURTHER REFERENCE TO 1987 CONGRESSIONAL STATEMENTS.—Congress further notes that in section 902 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1135) Congress also—

(1) noted that the President had certified that the Krasnoyarsk radar was an unequivocal violation of the 1972 Anti-Ballistic Missile Treaty; and

(2) stated it to be the sense of the Congress that the Soviet Union was in violation of its legal obligation under that treaty.

(c) FURTHER REFERENCE TO 1989 CONGRESSIONAL STATEMENTS.—Congress further notes that in section 1006(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1543) Congress also—

(1) again noted that in 1987 the President declared that radar to be a clear violation of the 1972 Anti-Ballistic Missile Treaty and noted that on October 23, 1989, the Foreign Minister of the Soviet Union conceded that the Krasnoyarsk radar is a violation of the 1972 Anti-Ballistic Missile Treaty; and

(2) stated it to be the sense of the Congress that the Soviet Union should dismantle the Krasnoyarsk radar expeditiously and without conditions and that until such radar was completely dismantled it would remain a clear violation of the 1972 Anti-Ballistic Missile Treaty.

(d) ADDITIONAL FINDINGS.—Congress also finds, with respect to the Krasnoyarsk radar, that retired Soviet General Y.V. Votintsev, Director of the Soviet National Air Defense Forces from 1967 to 1985, has publicly stated—

(1) that he was directed by the Chief of the Soviet General staff to locate the large phased-array radar at Krasnoyarsk despite the recognition by Soviet authorities that the location of such a radar at that location would be a clear violation of the 1972 Anti-Ballistic Missile Treaty; and

(2) that Marshal D.F. Ustinov, Soviet Minister of Defense, threatened to relieve from duty any Soviet officer who continued to object to the construction of a large-phased array radar at Krasnoyarsk.

(e) SENSE OF CONGRESS CONCERNING SOVIET TREATY VIOLATIONS.—It is the sense of Congress that the government of the Soviet Union intentionally violated its legal obligations under the 1972 Anti-Ballistic Missile Treaty in order to advance its national security interests.

(f) SENSE OF CONGRESS CONCERNING COMPLIANCE BY RUSSIA WITH ARMS CONTROL OBLIGATIONS.—In light of subsections (a) through (e), it is the sense of Congress that the United States should remain vigilant in ensuring compliance by Russia with its arms control obligations and should, when pursuing future arms control agreements with Russia, bear in mind violations of arms control obligations by the Soviet Union.

SEC. 1406. SENSE OF CONGRESS ON RATIFICATION OF CHEMICAL WEAPONS CONVENTION AND START II TREATY.

(a) FINDINGS.—Congress makes the following findings:

(1) Proliferation of chemical or nuclear weapons materials poses a danger to United States national security, and the threat or use of such materials by terrorists would directly threaten United States citizens at home and abroad.

(2) Events such as the March 1995 terrorist release of a chemical nerve agent in the Tokyo subway, the threatened use of chemical weapons during the 1991 Persian Gulf War, and the widespread use of chemical weapons during the Iran-Iraq War of the 1980's are all potent reminders of the menace posed by chemical weapons, of the fact that the threat of chemical weapons is not sufficiently addressed, and of the need to outlaw the development, production, and possession of chemical weapons.

(3) The Chemical Weapons Convention negotiated and signed by President Bush would make it more difficult for would-be proliferators, including terrorists, to acquire or use chemical weapons, if ratified and fully implemented, as signed, by all signatories.

(4) United States military authorities, including Chairman of the Joint Chiefs of Staff General John Shalikashvili, have stated that United States military forces will deter and respond to chemical weapons threats with a robust chemical defense and an overwhelming superior conventional response, as demonstrated in the Persian Gulf War, and have testified in support of the ratification of the Chemical Weapons Convention.

(5) The United States intelligence community has testified that the Convention will provide new and important sources of information, through regular data exchanges and routine and challenge inspections, to improve the ability of the United States to assess the chemical weapons status in countries of concern.

(6) The Convention has not entered into force for lack of the requisite number of ratifications.

(7) Russia has signed the Convention, but has not yet ratified it.

(8) There have been reports by Russian sources of continued Russian production and testing of chemical weapons, including a statement by a spokesman of the Russian Ministry of Defense on December 5, 1994, that "We cannot say that all chemical weapons production and testing has stopped altogether.".

(9) The Convention will impose a legally binding obligation on Russia and other nations that possess chemical weapons

and that ratify the Convention to cease offensive chemical weapons activities and to destroy their chemical weapons stockpiles and production facilities.

(10) The United States must be prepared to exercise fully its rights under the Convention, including the request of challenge inspections when warranted, and to exercise leadership in pursuing punitive measures against violators of the Convention, when warranted.

(11) The United States should strongly encourage full implementation at the earliest possible date of the terms and conditions of the United States-Russia bilateral chemical weapons destruction agreement signed in 1990.

(12) The START II Treaty negotiated and signed by President Bush would help reduce the danger of potential proliferators, including terrorists, acquiring nuclear warheads and materials, and would contribute to United States-Russian bilateral efforts to secure and dismantle nuclear warheads, if ratified and fully implemented as signed by both parties.

(13) It is in the national security interest of the United States to take effective steps to make it more difficult for proliferators or would-be terrorists to obtain chemical or nuclear materials for use in weapons.

(14) The President has urged prompt Senate action on, and advice and consent to ratification of, the START II Treaty and the Chemical Weapons Convention.

(15) The Chairman of the Joint Chiefs of Staff has testified to Congress that ratification and full implementation of both treaties by all parties is in the United States national interest and has strongly urged prompt Senate advice and consent to their ratification.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States, Russia, and all other parties to the START II Treaty and the Chemical Weapons Convention should promptly ratify and fully implement, as negotiated, both treaties.

* * * * * * *

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle C—Program Authorizations, Restrictions, and Limitations

SEC. 3131. [22 U.S.C. 5952 note] AUTHORITY TO CONDUCT PROGRAM RELATING TO FISSILE MATERIALS.

(a) AUTHORITY.—The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.

(b) SEMI-ANNUAL REPORTS ON OBLIGATION OF FUNDS.—(1) Not later than 30 days after the date of the enactment of this Act, and thereafter not later than April 1 and October 1 of each year, the Secretary of Energy shall submit to Congress a report on each obligation during the preceding six months of funds appropriated for a program described in subsection (a).

(2) Each such report shall specify—

(A) the activities and forms of assistance for which the Secretary of Energy has obligated funds;

(B) the amount of the obligation;

(C) the activities and forms of assistance for which the Secretary anticipates obligating funds during the six months immediately following the report, and the amount of each such anticipated obligation; and

(D) the projected involvement (if any) of any department or agency of the United States (in addition to the Department of Energy) and of the private sector of the United States in the activities and forms of assistance for which the Secretary of Energy has obligated funds referred to in subparagraph (A).

---

f. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE XV—ARMS CONTROL MATTERS

* * * * * * *

SEC. 1503. [22 U.S.C. 2751 note] REPORTS ON COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS.

(a) ANNUAL REPORT REQUIRED.—Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report of the findings of the Counterproliferation Program Review Committee established by subsection (a) of the Review Committee charter.

(b) CONTENT OF REPORT.—Each report under subsection (a) shall include the following:

(1) A complete list, by specific program element, of the existing, planned, or newly proposed capabilities and technologies reviewed by the Review Committee pursuant to subsection (c) of the Review Committee charter.

(2) A complete description of the requirements and priorities established by the Review Committee.

(3) A comprehensive discussion of the near-term, mid-term, and long-term programmatic options formulated by the Review Committee for meeting requirements prescribed by the Review Committee and for eliminating deficiencies identified by the Review Committee, including the annual funding requirements and completion dates established for each such option.

(4) An explanation of the recommendations made pursuant to subsection (c) of the Review Committee charter, together with a full discussion of the actions taken to implement such recommendations or otherwise taken on the recommendations.

(5) A discussion and assessment of the status of each Review Committee recommendation during the fiscal year pre-

ceding the fiscal year in which the report is submitted, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, in the fiscal year of the report.

(6) Each specific Department of Energy program that the Secretary of Energy plans to develop to initial operating capability and each such program that the Secretary does not plan to develop to initial operating capability.

(7) For each technology program scheduled to reach initial operational capability, a recommendation from the Chairman of the Joint Chiefs of Staff that represents the views of the commanders of the unified and specified commands regarding the utility and requirement of the program.

(c) FORMS OF REPORT.—Each such report shall be submitted in both unclassified and classified forms, including an annex to the classified report for special compartmented information programs, special access programs, and special activities programs.

(d) REVIEW COMMITTEE CHARTER DEFINED.—For purposes of this section, the term "Review Committee charter" means section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (22 U.S.C. 2751 note).

(e) TERMINATION OF REQUIREMENT.—The final report required under subsection (a) is the report for the year following the year in which the Counterproliferation Program Review Committee established under the Review Committee Charter ceases to exist.

SEC. 1504. AMOUNTS FOR COUNTERPROLIFERATION ACTIVITIES.

(a) COUNTERPROLIFERATION ACTIVITIES.—Of the amount authorized to be appropriated in section 201(4), $16,500,000 shall be available for counterproliferation activities.

(b) LIMITATION.—(1) Of the funds made available pursuant to subsection (a), $4,000,000 may not be obligated until the Secretary of Defense submits to Congress a report on a proposed classified counterproliferation database system. The report shall provide—

(A) an assessment of current major databases and software capabilities of entities in the intelligence community and of national weapons laboratories and laboratories of the Armed Forces against capabilities defined in the proposed project; and

(B) an assessment of the technical feasibility of the proposed system, program plan, strategy, milestones and future year funding.

(2) No funds may be obligated for the database system described in the report until the Secretary of Defense and the Director of Central Intelligence enter into a written agreement concerning the program to develop that database system that provides—

(A) how funding for that program is to be divided between (i) the account of the National Foreign Intelligence Program, and (ii) Tactical Intelligence and Related Program accounts; and

(B) a plan for the sources of funds for, and the programmed amounts for, that program for fiscal years after fiscal year 1995.

(c) EDUCATION IN SUPPORT OF COUNTERPROLIFERATION ACTIVITIES.—Of the amount authorized to be appropriated in section 301(5), not more than $2,000,000 shall be available for providing education to members of the Armed Forces in matters relating to counterproliferation.

(d) ADDITIONAL AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) In addition to the transfer authority provided in section 1001, upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 1995 to counterproliferation programs, projects, and activities identified as areas for progress by the Counterproliferation Program Review Committee established by section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), as amended by section 1502. Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this subsection may not exceed $100,000,000.

(3) The authority provided by this subsection to transfer authorizations—

(A) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(B) may not be used to provide authority for an item that has been denied authorization by Congress.

(4) 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.

(5) The Secretary of Defense shall promptly notify Congress of transfers made under the authority of this subsection.

(e) USE OF FUNDS FOR TECHNOLOGY DEVELOPMENT.—(1) Of the funds authorized to be appropriated by section 201(4) for counterproliferation technology projects—

(A) up to $5,000,000 shall be available for a program to detect, locate, and disarm weapons of mass destruction that are hidden by a hostile state or terrorist or terrorist group in a confined area outside the United States; and

(B) up to $10,000,000 shall be available for the training program referred to in paragraph (3).

(2) The Secretary of Defense shall make funds available for the program referred to in paragraph (1)(A) in a manner that, to the maximum extent practicable, ensures the effective use of existing resources of the national weapons laboratories.

(3)(A) The training program referred to in paragraph (1)(B) is a training program carried out jointly by the Secretary of Defense and the Director of the Federal Bureau of Investigation in order to expand and improve United States efforts to deter the possible proliferation and acquisition weapons of mass destruction by organized crime organizations in Eastern Europe, the Baltic countries, and states of the former Soviet Union.

(B) Of the funds available under paragraph (1)(B) for the program referred to in subparagraph (A), $9,000,000 may not be obligated or expended for that program until the Secretary of Defense and the Director of the Federal Bureau of Investigation jointly submit to the congressional committees specified in subparagraph (C) a report that—

(i) identifies the nature and extent of the threat posed to the United States by the possible proliferation and acquisition of weapons of mass destruction by organized crime organizations in Eastern Europe, the Baltic countries, and states of the former Soviet Union;

(ii) assesses the actions that the United States should undertake in order to assist law enforcement agencies of Eastern Europe, the Baltic countries, and states of the former Soviet Union in the efforts of such agencies to prevent and deter the theft of nuclear weapons material; and

(iii) contains an estimate of—

(I) the cost of undertaking such actions, including the costs of personnel, support equipment, and training;

(II) the time required to commence the carrying out of the program referred to in paragraph (1)(B); and

(III) the amount of funds, if any, that will be required in fiscal years after fiscal year 1995 in order to carry out the program.

(C) The congressional committees referred to in this subparagraph are the following:

(i) The Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives.

(ii) The Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate.

SEC. 1505. STUDIES RELATING TO UNITED STATES COUNTERPROLIFERATION POLICY.

[Omitted—Amendments**]**

SEC. 1506. RESTRICTION RELATING TO SUBMISSION OF REPORT ON PROLIFERATION OF FOREIGN MILITARY SATELLITES.

None of the funds available to the Department of Defense may be expended for travel by the Assistant Secretary of Defense for International Security Policy until the Secretary of Defense submits to Congress the report required by section 1363 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2560).

* * * * * * *

SEC. 1508. SENSE OF CONGRESS CONCERNING INDEFINITE EXTENSION OF NUCLEAR NON-PROLIFERATION TREATY.

(a) FINDINGS.—Congress makes the following findings:

(1) The Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, D.C., London, and Moscow on July 1, 1968, is the centerpiece of global efforts to prevent the spread of nuclear weapons.

(2) The United States has demonstrated longstanding support for that treaty and related efforts to prevent the spread of nuclear weapons.

(3) President Clinton has declared that preventing the spread of nuclear weapons is one of the highest priorities of his Administration.

(4) In April 1995, the parties to the Treaty on the Non-Proliferation of Nuclear Weapons will convene a conference in New York City to discuss the indefinite extension of the treaty.

(5) The policy of the President is to seek at that conference the indefinite and unconditional extension of that treaty.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President has the full support of Congress in seeking the indefinite and unconditional extension of the Treaty on the Non-Proliferation of Nuclear Weapons;

(2) the President, when formulating and implementing other elements of nonproliferation policy of the United States (including United States counterproliferation doctrine, the Nuclear Posture Review, and nuclear testing policy), should take into account the objectives of the United States at the 1995 conference of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons; and

(3) the President and the President's senior national security advisers should dedicate themselves to ensuring the indefinite and unconditional extension of the Treaty on the Non-Proliferation of Nuclear Weapons at the 1995 conference for that treaty.

SEC. 1509. NEGOTIATION OF LIMITATIONS ON NUCLEAR WEAPONS TESTING.

(a) FINDINGS.—Congress makes the following findings:

(1) On January 25, 1994, the United States and 37 other nations began negotiations for a comprehensive treaty to ban permanently all nuclear weapons testing.

(2) On March 14, 1994, the President extended the current United States moratorium on nuclear weapons testing through September 1995.

(3) The United States is seeking to extend indefinitely the Treaty on the Non-Proliferation of Nuclear Weapons at the conference of the parties to the Treaty to be held in New York City in April 1995.

(4) Conclusion of a comprehensive nuclear test ban treaty could contribute toward successful negotiations to extend the Treaty on the Non-Proliferation of Nuclear Weapons.

(5) Agreements to eliminate nuclear weapons testing and to control the spread of nuclear weapons could contribute to the national security of the United States, its allies, and other nations around the world.

(b) STATEMENT OF CONGRESSIONAL POLICY.—In view of the findings set forth in subsection (a), Congress—

(1) applauds the President for maintaining the United States moratorium on nuclear weapons testing and for taking a leadership role toward negotiation of a comprehensive nuclear test ban treaty;

(2) encourages all nuclear powers to refrain from conducting nuclear explosions, before the conclusion of a comprehensive nuclear test ban treaty; and

(3) urges the Conference on Disarmament to make all possible progress toward a comprehensive nuclear test ban treaty by the end of 1994.

---

g. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE XVI—ARMS CONTROL MATTERS

Subtitle A—Programs in Support of the Prevention and Control of Proliferation of Weapons of Mass Destruction

SEC. 1601. STUDY OF GLOBAL PROLIFERATION OF STRATEGIC AND ADVANCED CONVENTIONAL MILITARY WEAPONS AND RELATED EQUIPMENT AND TECHNOLOGY.

(a) STUDY.—The President shall conduct a study of (1) the factors that contribute to the proliferation of strategic and advanced conventional military weapons and related equipment and technologies, and (2) the policy options that are available to the United States to inhibit such proliferation.

(b) CONDUCT OF STUDY.—In carrying out the study the President shall do the following:

(1) Identify those factors contributing to global weapons proliferation which can be most effectively regulated.

(2) Identify and assess policy approaches available to the United States to discourage the transfer of strategic and advanced conventional military weapons and related equipment and technology.

(3) Assess the effectiveness of current multilateral efforts to control the transfer of such military weapons and equipment and such technology.

(4) Identify and examine methods by which the United States could reinforce these multilateral efforts to discourage the transfer of such weapons and equipment and such technology, including placing conditions on assistance provided by the United States to other nations.

(5) Identify the circumstances under which United States national security interests might best be served by a transfer of conventional military weapons and related equipment and technology, and specifically assess whether such circumstances exist when such a transfer is made to an allied country which, with the United States, has mutual national security interests to be served by such a transfer.

(6) Assess the effect on the United States economy and the national technology and industrial base (as defined by section 2491(1) of title 10, United States Code) which might result from potential changes in United States policy controlling the transfer of such military weapons and related equipment and technology.

(c) ADVISORY BOARD.—(1) Within 15 days after the date of the enactment of this Act [November 30, 1993], the President shall

establish an Advisory Board on Arms Proliferation Policy. The advisory board shall be composed of 5 members. The President shall appoint the members from among persons in private life who are noted for their stature and expertise in matters covered by the study required under subsection (a) and shall ensure, in making the appointments, that the advisory board is composed of members from diverse backgrounds. The President shall designate one of the members as chairman of the advisory board.

(2) The President is encouraged—

(A) to obtain the advice of the advisory board regarding the matters studied pursuant to subsection (a) and to consider that advice in carrying out the study; and

(B) to ensure that the advisory board is informed in a timely manner and on a continuing basis of the results of policy reviews carried out under the study by persons outside the board.

(3) The members of the advisory board shall receive no pay for serving on the advisory board. However, the members shall be allowed travel expenses and per diem in accordance with the regulations referred to in paragraph (6).

(4) Upon request of the chairman of the advisory board, the Secretary of Defense or the head of any other Federal department or agency may detail, without reimbursement for costs, any of the personnel of the department or agency to the advisory board to assist the board in carrying out its duties.

(5) The Secretary of Defense shall designate a federally funded research and development center with expertise in the matters covered by the study required under subsection (a) to provide the advisory board with such support services as the advisory board may need to carry out its duties.

(6) Except as otherwise provided in this section, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and the regulations prescribed by the Administrator of General Services pursuant to that Act, shall apply to the advisory board. Subsections (e) and (f) of section 10 of such Act do not apply to the advisory board.

(7) The advisory board shall terminate 30 days after the date on which the President submits the final report of the advisory board to Congress pursuant to subsection (d)(2)(B).

(d) REPORTS.—(1) The Advisory Board on Arms Proliferation Policy shall submit to the President, not later than May 15, 1994, a report containing its findings, conclusions, and recommendations on the matters covered by the study carried out pursuant to subsection (a).

(2) The President shall submit to Congress, not later than June 1, 1994—

(A) a report on the study carried out pursuant to subsection (a), including the President's findings and conclusions regarding the matters considered in the study; and

(B) the report of the Advisory Board on Arms Proliferation Policy received under paragraph (1), together with the comments, if any, of the President on that report.

SEC. 1602. EXTENSION OF EXISTING AUTHORITIES.

[Omitted—Amendment]

SEC. 1603. [22 U.S.C. 2751 note] STUDIES RELATING TO UNITED STATES COUNTERPROLIFERATION POLICY.

(a) AUTHORIZATION TO CONDUCT STUDIES.—The Secretary of Defense may conduct studies and analysis programs in support of the counterproliferation policy of the United States.

(b) COUNTERPROLIFERATION STUDIES.—Studies and analysis programs under this section may include programs intended to explore defense policy issues that might be involved in efforts to prevent and counter the proliferation of weapons of mass destruction and their delivery systems. Such efforts include—

(1) enhancing United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction;

(2) cooperating in international programs to enhance military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction; and

(3) otherwise contributing to Department of Defense capabilities to deter, identify, monitor, and respond to such terrorism, theft, and proliferation involving weapons of mass destruction.

(c) DESIGNATION OF COORDINATOR.—The Under Secretary of Defense for Policy, subject to the supervision and control of the Secretary of Defense, shall coordinate the policy studies and analysis of the Department of Defense on countering proliferation of weapons of mass destruction and their delivery systems.

(d) REPORT.—Not later than April 30 of each year, the Secretary of Defense shall submit to the appropriate congressional committees a report on the activities carried out under subsection (a). Each report shall set forth for the twelve-month period ending on the last day of the month preceding the month in which the report is due the following:

(1) A description of the studies and analysis carried out.

(2) The amounts spent for such studies and analysis.

(3) The organizations that conducted the studies and analysis.

(4) An explanation of the extent to which such studies and analysis contribute to the counterproliferation policy of the United States and United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction.

(5) A description of the measures being taken to ensure that such studies and analysis within the Department of Defense are managed effectively and coordinated comprehensively.

SEC. 1604. SENSE OF CONGRESS REGARDING UNITED STATES CAPABILITIES TO PREVENT AND COUNTER WEAPONS PROLIFERATION.

It is the sense of Congress that—

(1) the United States should have the ability to counter effectively potential threats to United States interests that arise from the proliferation of such weapons;

(2) the Department of Defense, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the intelligence community have important roles, as well as unique capabilities and expertise, in preventing the proliferation of weapons of mass destruction and dealing with the consequences of any proliferation of such weapons, including capabilities and expertise regarding—

(A) detection and monitoring of proliferation of weapons of mass destruction;

(B) development of effective export control regimes;

(C) interdiction and destruction of weapons of mass destruction and related weapons material; and

(D) carrying out international monitoring and inspection regimes that relate to proliferation of such weapons and material;

(3) the Department of Defense, the Department of Energy, and the intelligence community have unique capabilities and expertise that contribute directly to the ability of the United States to implement United States policy to counter effectively the threats that arise from the proliferation of weapons of mass destruction, including capabilities and expertise regarding—

(A) responses to terrorism, theft, or accidents involving weapons of mass destruction;

(B) conduct of intrusive international inspections for verification of arms control treaties;

(C) direct and discrete counterproliferation actions that require use of force; and

(D) development and deployment of active military countermeasures and protective measures against threats resulting from arms proliferation, including defenses against ballistic missile attacks; and

(4) the United States should continue to maintain and improve its capabilities to identify, monitor, and respond to the proliferation of weapons of mass destruction and delivery systems for such weapons.

SEC. 1605. [22 U.S.C. 2751 note] JOINT COMMITTEE FOR REVIEW OF COUNTERPROLIFERATION PROGRAMS OF THE UNITED STATES.

(a) ESTABLISHMENT.—(1) There is hereby established a Counterproliferation Program Review Committee composed of the following members:

(A) The Secretary of Defense.

(B) The Secretary of Energy.

(C) The Director of Central Intelligence.

(D) The Chairman of the Joint Chiefs of Staff.

(2) The Secretary of Defense shall chair the committee. The Secretary of Energy shall serve as the Vice Chairman of the committee.

(3) A member of the committee may designate a representative to perform routinely the duties of the member. A representative shall be in a position of Deputy Assistant Secretary or a position equivalent to or above the level of Deputy Assistant Secretary. A representative of the Chairman of the Joint Chiefs of Staff shall be

a person in a grade equivalent to that of Deputy Assistant Secretary of Defense.

(4) The Secretary of Defense may delegate to the Under Secretary of Defense for Acquisition and Technology the performance of the duties of the Chairman of the committee. The Secretary of Energy may delegate to the Under Secretary of Energy responsible for national security programs of the Department of Energy the performance of the duties of the Vice Chairman of the committee.

(5) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs shall serve as executive secretary to the committee, except that during any period during which that position is vacant the Assistant Secretary of Defense for Strategy and Threat Reduction shall serve as the executive secretary.

(b) PURPOSES OF THE COMMITTEE.—The purposes of the committee are as follows:

(1) To optimize funding for, and ensure the development and deployment of—

(A) highly effective technologies and capabilities for the detection, monitoring, collection, processing, analysis, and dissemination of information in support of United States counterproliferation policy and efforts, including efforts to stem the proliferation of weapons of mass destruction and to negate paramilitary and terrorist threats involving weapons of mass destruction; and

(B) disabling technologies in support of such policy.

(2) To identify and eliminate undesirable redundancies or uncoordinated efforts in the development and deployment of such technologies and capabilities.

(3) To establish priorities for programs and funding.

(4) To encourage and facilitate interagency and interdepartmental funding of programs in order to ensure necessary levels of funding to develop, operate, and field highly-capable systems.

(5) To ensure that Department of Energy programs are integrated with the operational needs of other departments and agencies of the Government.

(6) To ensure that Department of Energy national security programs include technology demonstrations and prototype development of equipment.

(c) DUTIES.—The committee shall—

(1) identify and review existing and proposed capabilities and technologies for support of United States nonproliferation policy and counterproliferation policywith regard to—

(A) intelligence;

(B) battlefield surveillance;

(C) passive defenses;

(D) active defenses; and

(E) counterforce capabilities;

(2) prescribe requirements and priorities for the development and deployment of highly effective capabilities and technologies;

(3) identify deficiencies in existing capabilities and technologies;

(4) formulate near-term, mid-term, and long-term programmatic options for meeting requirements established by the committee and eliminating deficiencies identified by the committee; and

(5) assess each fiscal year the effectiveness of the committee actions during the preceding fiscal year, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for the fiscal year following the fiscal year in which the assessment is made.

(d) ACCESS TO INFORMATION.—The committee shall have access to information on all programs, projects, and activities of the Department of Defense, the Department of State, the Department of Energy, the intelligence community, and the Arms Control and Disarmament Agency that are pertinent to the purposes and duties of the committee.

(e) RECOMMENDATIONS.—The committee shall submit to the President and the heads of all appropriate departments and agencies of the Government such programmatic recommendations regarding existing, planned, or new programs as the committee considers appropriate to encourage funding for capabilities and technologies at the level necessary to support United States counterproliferation policy.

(f) TERMINATION OF COMMITTEE.—The committee shall cease to exist at the end of September 30, 2004.

SEC. 1606. REPORT ON NONPROLIFERATION AND COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS.

(a) REPORT REQUIRED.—Not later than May 1, 1994, the Secretary of Defense shall submit to Congress a report on the findings of the committee on nonproliferation activities established by section 1605.

(b) CONTENT OF REPORT.—The report shall include the following matters:

(1) A complete list, by program, of the existing, planned, and proposed capabilities and technologies reviewed by the committee, including all directed energy and laser programs reviewed pursuant to section 1605(c)(2).

(2) A complete description of the requirements and priorities established by the committee.

(3) A comprehensive discussion of the near-term, mid-term, and long-term programmatic options formulated by the committee for meeting requirements prescribed by the committee and eliminating deficiencies identified by the committee, including the annual funding requirements and completion dates established for each such option.

(4) An explanation of the recommendations made pursuant to section 1605(e) and a full discussion of the actions taken on such recommendations, including the actions taken to implement the recommendations.

(5) A discussion of the existing and planned capabilities of the Department of Defense—

(A) to detect and monitor clandestine programs for the acquisition or production of weapons of mass destruction;

(B) to respond to terrorism or accidents involving such weapons and thefts of materials related to any weapon of mass destruction; and

(C) to assist in the interdiction and destruction of weapons of mass destruction, related weapons materials, and advanced conventional weapons.

(6) A description of—

(A) the extent to which the Secretary of Defense has incorporated nonproliferation and counterproliferation missions into the overall missions of the unified combatant commands; and

(B) how the special operations command established pursuant to section 167(a) of title 10, United States Code, might support the commanders of the other unified combatant commands and the commanders of the specified combatant commands in the performance of such overall missions.

(c) FORMS OF REPORT.—The report shall be submitted in both unclassified and classified forms, as appropriate.

SEC. 1607. DEFINITIONS.

For purposes of this subtitle:

(1) The term "appropriate congressional committees" means—

(A) the Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "intelligence community" has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

Subtitle B—International Nonproliferation Activities

SEC. 1611. NUCLEAR NONPROLIFERATION.

(a) FINDINGS.—The Congress finds the following:

(1) The United States has been seeking to contain the spread of nuclear weapons technology and materials.

(2) With the end of the Cold War and the breakup of the Soviet Union, the proliferation of nuclear weapons is now a leading military threat to the national security of the United States and its allies.

(3) The United Nations Security Council declared on January 31, 1992, that "proliferation of all weapons of mass destruction constitutes a threat to international peace and security" and committed to taking appropriate action to prevent proliferation from occurring.

(4) Aside from the five declared nuclear weapon states, a number of other nations have or are pursuing nuclear weapons capabilities.

(5) The IAEA is a valuable international institution to counter proliferation, but the effectiveness of its system to safeguard nuclear materials may be adversely affected by financial constraints.

(6) The Nuclear Non-Proliferation Treaty codifies world consensus against further nuclear proliferation and is scheduled for review and extension in 1995.

(7) The Nuclear Nonproliferation Act of 1978 declared that the United States is committed to continued strong support for the Nuclear Non-Proliferation Treaty and to a strengthened and more effective IAEA, and established that it is United States policy to establish more effective controls over the transfer of nuclear equipment, materials, and technology.

(b) COMPREHENSIVE NUCLEAR NONPROLIFERATION POLICY.—In order to end nuclear proliferation and reduce current nuclear arsenals and supplies of weapons-usable nuclear materials, it should be the policy of the United States to pursue a comprehensive policy to end the further spread of nuclear weapons capability, roll back nuclear proliferation where it has occurred, and prevent the use of nuclear weapons anywhere in the world, with the following additional objectives:

(1) Successful conclusion of all pending nuclear arms control and disarmament agreements with all the republics of the former Soviet Union and their secure implementation.

(2) Full participation by all the republics of the former Soviet Union in all multilateral nuclear nonproliferation efforts and acceptance of IAEA safeguards on all their nuclear facilities.

(3) Strengthening of United States and international support to the IAEA so that the IAEA has the technical, financial, and political resources to verify that countries are complying with their nonproliferation commitments.

(4) Strengthening of nuclear export controls in the United States and other nuclear supplier nations, impose sanctions on individuals, companies, and countries which contribute to nuclear proliferation, and provide increased public information on nuclear export licenses approved in the United States.

(5) Reduction in incentives for countries to pursue the acquisition of nuclear weapons by seeking to reduce regional tensions and to strengthen regional security agreements, and encourage the United Nations Security Council to increase its role in enforcing international nuclear nonproliferation agreements.

(6) Support for the indefinite extension of the Nuclear Non-Proliferation Treaty at the 1995 conference to review and extend that treaty and seek to ensure that all countries sign the treaty or participate in a comparable international regime for monitoring and safeguarding nuclear facilities and materials.

(7) Reaching agreement with the Russian Federation to end the production of new types of nuclear warheads.

(8) Pursuing, once the START I treaty and the START II treaty are ratified by all parties, a multilateral agreement to significantly reduce the strategic nuclear arsenals of the

United States and the Russian Federation to below the levels of the START II treaty, with lower levels for the United Kingdom, France, and the People's Republic of China.

(9) Reaching immediate agreement with the Russian Federation to halt permanently the production of fissile material for weapons purposes, and working to achieve worldwide agreements to—

(A) end in the shortest possible time the production of weapons-usable fissile material;

(B) place existing stockpiles of such materials under bilateral or international controls; and

(C) require countries to place all of their nuclear facilities dedicated to peaceful purposes under IAEA safeguards.

(10) Strengthening IAEA safeguards to more effectively verify that countries are complying with their nonproliferation commitments and provide the IAEA with the political, technical, and financial support necessary to implement the necessary safeguard reforms.

(11) Conclusion of a multilateral comprehensive nuclear test ban treaty.

(c) REQUIREMENTS FOR IMPLEMENTATION OF POLICY.—(1) Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Congress a report, in unclassified form, with a classified appendix if necessary, on the actions the United States has taken and the actions the United States plans to take during the succeeding 12-month period to implement each of the policy objectives set forth in this section.

(2) Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Congress a report in unclassified form, with a classified appendix if necessary, which—

(A) addresses the implications of the adoption by the United States of a policy of no-first-use of nuclear weapons;

(B) addresses the implications of an agreement with the other nuclear weapons states to adopt such a policy; and

(C) addresses the implications of a verifiable bilateral agreement with the Russian Federation under which both countries withdraw from their arsenals and dismantle all tactical nuclear weapons, and seek to extend to all nuclear weapons states this zero option for tactical nuclear weapons.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "IAEA" means the International Atomic Energy Agency.

(2) The term "IAEA safeguards" means the safeguards set forth in an agreement between a country and the IAEA, as authorized by Article III(A)(5) of the Statute of the International Atomic Energy Agency.

(3) The term "non-nuclear weapon state" means any country that is not a nuclear weapon state.

(4) The term "Nuclear Non-Proliferation Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(5) The term "nuclear weapon state" means any country that is a nuclear-weapon state, as defined by Article IX(3) of

the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(6) The term "weapons-usable fissile materials" means highly enriched uranium and separated or reprocessed plutonium.

(7) The term "policy of no first use of nuclear weapons" means a commitment not to initiate the use of nuclear weapons.

(8) The term "START II treaty" means the Treaty on Further Reductions and Limitations of Strategic Offensive Arms, signed by the United States and the Russian Federation on January 3, 1993.

SEC. 1612. [22 U.S.C. 5952 note] CONDITION ON ASSISTANCE TO RUSSIA FOR CONSTRUCTION OF PLUTONIUM STORAGE FACILITY.

(a) LIMITATION.—Until a certification under subsection (b) is made, no funds may be obligated or expended by the United States for the purpose of assisting the Ministry of Atomic Energy of Russia to construct a storage facility for surplus plutonium from dismantled weapons.

(b) CERTIFICATION OF RUSSIA'S COMMITMENT TO HALT CHEMICAL SEPARATION OF WEAPON-GRADE PLUTONIUM.—The prohibition in subsection (a) shall cease to apply upon a certification by the President to Congress that Russia—

(1) is committed to halting the chemical separation of weapon-grade plutonium from spent nuclear fuel; and

(2) is taking all practical steps to halt such separation at the earliest possible date.

(c) SENSE OF CONGRESS ON PLUTONIUM POLICY.—It is the sense of Congress that a key objective of the United States with respect to the nonproliferation of nuclear weapons should be to obtain a clear and unequivocal commitment from the Government of Russia that it will (1) cease all production and separation of weapon-grade plutonium, and (2) halt chemical separation of plutonium produced in civil nuclear power reactors.

(d) REPORT.—Not later than June 1, 1994, the President shall submit to Congress a report on the status of efforts by the United States to secure the commitments and achieve the objective described in subsections (b) and (c). The President shall include in the report a discussion of the status of joint efforts by the United States and Russia to replace any remaining Russian plutonium production reactors with alternative power sources or to convert such reactors to operation with alternative fuels that would permit their operation without generating weapon-grade plutonium.

SEC. 1613. NORTH KOREA AND THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS.

(a) FINDINGS.—The Congress finds the following:

(1) The Treaty on the Non-Proliferation of Nuclear Weapons, to which 156 states are party, is the cornerstone of the international nuclear nonproliferation regime.

(2) Any nonnuclear weapon state that is a party to the Treaty on the Non-Proliferation of Nuclear Weapons is obligated to accept International Atomic Energy Agency safeguards on all source or special fissionable material that is

within its territory, under its jurisdiction, or carried out under its control anywhere.

(3) The International Atomic Energy Agency is permitted to conduct inspections in a nonnuclear weapon state that is a party to the Treaty at any site, whether or not declared by that state, to ensure that all source or special fissionable material in that state is under safeguards.

(4) North Korea acceded to the Treaty on the Non-Proliferation of Nuclear Weapons as a nonnuclear weapons state in December 1985.

(5) North Korea, after acceding to that Treaty, refused until 1992 to accept International Atomic Energy Agency safeguards as required under the Treaty.

(6) Inspections of North Korea's nuclear materials by the International Atomic Energy Agency suggested discrepancies in North Korea's declarations regarding special nuclear materials.

(7) North Korea has not given a scientifically satisfactory explanation for those discrepancies.

(8) North Korea refused to provide International Atomic Energy Agency inspectors with full access to two sites for the purposes of verifying its compliance with the Treaty on the Non-Proliferation of Nuclear Weapons.

(9) When called upon by the International Atomic Energy Agency to provide such full access as required by the Treaty, North Korea announced its intention to withdraw from the Treaty, effective after the required three months notice.

(10) After intensive negotiations with the United States, North Korea agreed to suspend its intention to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons and begin consultations with the International Atomic Energy Agency on providing access to its suspect sites.

(11) In an attempt to persuade North Korea to abandon its nuclear weapons program, the United States has offered to discuss with North Korea specific incentives that could be provided for North Korea once (A) outstanding inspection issues between North Korea and the International Atomic Energy Agency are resolved, and (B) progress is made in bilateral talks between North Korea and South Korea.

(b) CONGRESSIONAL STATEMENTS.—The Congress—

(1) notes that the continued refusal of North Korea nearly eight years after ratification of the Treaty on the Non-Proliferation of Nuclear Weapons to fully accept International Atomic Energy Agency safeguards raises serious questions regarding a possible North Korean nuclear weapons program;

(2) notes that possession by North Korea of nuclear weapons (A) would threaten peace and stability in Asia, (B) would jeopardize the existing nuclear non-proliferation regime, and (C) would undermine the goal of the United States to extend the Treaty on the Non-Proliferation of Nuclear Weapons at the 1995 review conference;

(3) urges continued pressure from the President, United States allies, and the United Nations Security Council on North Korea to adhere to the Treaty and provide full access to

the International Atomic Energy Agency in the shortest time possible;

(4) urges the President, United States allies, and the United Nations Security Council to press for continued talks between North Korea and South Korea on denuclearization of the Korean peninsula;

(5) urges that no trade, financial, or other economic benefits be provided to North Korea by the United States or United States allies until North Korea has (A) provided full access to the International Atomic Energy Agency, (B) satisfactorily explained any discrepancies in its declarations of bomb-grade material, and (C) fully demonstrated that it does not have or seek a nuclear weapons capability; and

(6) calls on the President and the international community to take steps to strengthen the international nuclear nonproliferation regime.

SEC. 1614. SENSE OF CONGRESS RELATING TO THE PROLIFERATION OF SPACE LAUNCH VEHICLE TECHNOLOGIES.

(a) FINDINGS.—The Congress finds the following:

(1) The United States has joined with other nations in the Missile Technology Control Regime (MTCR), which restricts the transfer of missiles or equipment or technology that could contribute to the design, development, or production of missiles capable of delivering weapons of mass destruction.

(2) Missile technology is indistinguishable from, and interchangeable with, space launch vehicle technology.

(3) Transfers of missile technology or space launch vehicle technology cannot be safeguarded in a manner that would provide timely warning of diversion for military purposes.

(4) It has been United States policy since agreeing to the guidelines of the Missile Technology Control Regime to treat the sale or transfer of space launch vehicle technology as restrictively as the sale or transfer of missile technology.

(5) Previous congressional action on missile proliferation, notably title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1738), has explicitly supported the policy described in paragraph (4) through such actions as the statutory definition of the term "missile" to mean "a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems".

(6) There is strong evidence that emerging national space launch programs in the Third World are not economically viable.

(7) The United States has been successful in dissuading other countries from pursuing space launch vehicle programs in part by offering to cooperate with those countries in other areas of space science and technology.

(8) The United States has successfully dissuaded other MTCR adherents, and countries who have agreed to abide by MTCR guidelines, from providing assistance to emerging national space launch programs in the Third World.

(b) STRICT INTERPRETATION OF MTCR.—The Congress supports the strict interpretation by the United States of the Missile Technology Control Regime concerning—

(1) the inability to distinguish space launch vehicle technology from missile technology under the regime; and

(2) the inability to safeguard space launch vehicle technology in a manner that would provide timely warning of the diversion of such technology to military purposes.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the United States Government and the governments of other nations adhering to the Missile Technology Control Regime should be recognized by the international community for—

(1) the success of those governments in restricting the export of space launch vehicle technology and of missile technology; and

(2) the significant contribution made by the imposition of such restrictions to reducing the proliferation of missile technology capable of being used to deliver weapons of mass destruction.

(d) DEFINITION.—For purposes of this section, the term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

---

h. National Defense Authorization Act for Fiscal Year 1993 (including Weapons of Mass Destruction Control Act of 1992 and Iran-Iraq Arms Non-Proliferation Act of 1992)

(Public Law 102–484, approved Oct. 23, 1992)

TITLE XIII—MATTERS RELATING TO ALLIES AND OTHER NATIONS

* * * * * * *

SEC. 1321. [22 U.S.C. 5901 note] NUCLEAR WEAPONS REDUCTION.

(a) FINDINGS.—The Congress makes the following findings:

(1) On February 1, 1992, the President of the United States and the President of the Russian Federation agreed in a Joint Statement that "Russia and the United States do not regard each other as potential adversaries" and stated further that, "We will work to remove any remnants of cold war hostility, including taking steps to reduce our strategic arsenals".

(2) In the Treaty on the Non-Proliferation of Nuclear Weapons, in exchange for the non-nuclear-weapon states agreeing not to seek a nuclear weapons capability nor to assist other non-nuclear-weapon states in doing so, the United States agreed to seek the complete elimination of all nuclear weapons worldwide, as declared in the preamble to the Treaty, which states that it is a goal of the parties to the Treaty to "facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of

their delivery" as well as in Article VI of the Treaty, which states that "each of the parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament".

(3) Carrying out a policy of seeking further significant and continuous reductions in the nuclear arsenals of all countries, besides reducing the likelihood of the proliferation of nuclear weapons and increasing the likelihood of a successful extension and possible strengthening of the Treaty on the Non-Proliferation of Nuclear Weapons in 1995, when the Treaty is scheduled for review and possible extension, has additional benefits to the national security of the United States, including—

(A) a reduced risk of accidental enablement and launch of a nuclear weapon, and

(B) a defense cost savings which could be reallocated for deficit reduction or other important national needs.

(4) The Strategic Arms Reduction Talks (START) Treaty and the agreement by the President of the United States and the President of the Russian Federation on June 17, 1992, to reduce the strategic nuclear arsenals of each country to a level between 3,000 and 3,500 weapons are commendable intermediate stages in the process of achieving the policy goals described in paragraphs (1) and (2).

(5) The current international era of cooperation provides greater opportunities for achieving worldwide reduction and control of nuclear weapons and material than any time since the emergence of nuclear weapons 50 years ago.

(6) It is in the security interests of both the United States and the world community for the President and the Congress to begin the process of reducing the number of nuclear weapons in every country through multilateral agreements and other appropriate means.

(7) In a 1991 study, a committee of the National Academy of Sciences concluded that: "The appropriate new levels of nuclear weapons cannot be specified at this time, but it seems reasonable to the committee that U.S. strategic forces could in time be reduced to 1,000–2,000 nuclear warheads, provided that such a multilateral agreement included appropriate levels and verification measures for the other nations that possess nuclear weapons. This step would require successful implementation of our proposed post-START U.S.-Soviet reductions, related confidence-building measures in all the countries involved, and multilateral security cooperation in areas such as conventional force deployments and planning.".

(b) UNITED STATES POLICY.—It shall be the goal of the United States—

(1) to encourage and facilitate the denuclearization of Ukraine, Byelarus, and Kazakhstan, as agreed upon in the Lisbon ministerial meeting of May 23, 1992;

(2) to rapidly complete and submit for ratification by the United States the treaty incorporating the agreement of June 17, 1992, between the United States and the Russian Federa-

tion to reduce the number of strategic nuclear weapons in each country's arsenal to a level between 3,000 and 3,500;

(3) to facilitate the ability of the Russian Federation, Ukraine, Byelarus, and Kazakhstan to implement agreed mutual reductions under the START Treaty, and under the Joint Understanding of June 16–17, 1992 between the United States and the Russian Federation, on an accelerated timetable, so that all such reductions can be completed by the year 2000;

(4) to build on the agreement reached in the Joint Understanding of June 16–17, 1992, by entering into multilateral negotiations with the Russian Federation, the United Kingdom, France, and the People's Republic of China, and, at an appropriate point in that process, enter into negotiations with other nuclear armed states in order to reach subsequent stage-by-stage agreements to achieve further reductions in the number of nuclear weapons in all countries;

(5) to continue and extend cooperative discussions with the appropriate authorities of the former Soviet military on means to maintain and improve secure command and control over nuclear forces;

(6) in consultation with other member countries of the North Atlantic Treaty Organization and other allies, to initiate discussions to bring tactical nuclear weapons into the arms control process; and

(7) to ensure that the United States assistance to securely transport and store, and ultimately dismantle, former Soviet nuclear weapons and missiles for such weapons is being properly and effectively utilized.

(c) ANNUAL REPORT.—By February 1 of each year, the President shall submit to the Congress a report on—

(1) the actions that the United States has taken, and the actions the United States plans to take during the next 12 months, to achieve each of the goals set forth in paragraphs (1) through (6) of subsection (b); and

(2) the actions that have been taken by the Russian Federation, by other former Soviet republics, and by other countries to achieve those goals.

Each such report shall be submitted in unclassified form, with a classified appendix if necessary.

* * * * * * *

TITLE XV—NONPROLIFERATION

SEC. 1501. SHORT TITLE.

This title may be cited as the "Weapons of Mass Destruction Control Act of 1992".

SEC. 1502. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the proliferation (A) of nuclear, biological, and chemical weapons (hereinafter in this title referred to as "weapons of mass destruction") and related technology and knowledge and (B) of missile delivery systems remains one of the most serious

threats to international peace and the national security of the United States in the post-cold war era;

(2) the proliferation of nuclear weapons, given the extraordinary lethality of those weapons, is of particularly serious concern;

(3) the nonproliferation policy of the United States should continue to seek to limit both the supply of and demand for weapons of mass destruction and to reduce the existing threat from proliferation of such weapons;

(4) substantial funding of nonproliferation activities by the United States is essential to controlling the proliferation of all weapons of mass destruction, especially nuclear weapons and missile delivery systems;

(5) the President's nonproliferation policy statement of June 1992, and his September 10, 1992, initiative to increase funding for nonproliferation activities in the Department of Energy are praiseworthy;

(6) the Congress is committed to cooperating with the President in carrying out an effective policy designed to control the proliferation of weapons of mass destruction;

(7) the President should identify a full range of appropriate, high priority nonproliferation activities that can be undertaken by the United States and should include requests for full funding for those activities in the budget submission for fiscal year 1994;

(8) the Department of Defense and the Department of Energy have unique expertise that can further enhance the effectiveness of international nonproliferation activities;

(9) under the guidance of the President, the Secretary of Defense and the Secretary of Energy should continue to actively assist in United States nonproliferation activities and in formulating and executing United States nonproliferation policy, emphasizing activities such as improved capabilities (A) to detect and monitor proliferation, (B) to respond to terrorism, theft, and accidents involving weapons of mass destruction, and (C) to assist with interdiction and destruction of weapons of mass destruction and related weapons material; and

(10) in a manner consistent with United States nonproliferation policy, the Department of Defense and the Department of Energy should continue to maintain and to improve their capabilities to identify, monitor, and respond to proliferation of weapons of mass destruction and missile delivery systems.

SEC. 1503. REPORT ON DEPARTMENT OF DEFENSE AND DEPARTMENT OF ENERGY NONPROLIFERATION ACTIVITIES.

(a) REPORT REQUIRED.—The Secretary of Defense and the Secretary of Energy shall jointly submit to the committees of Congress named in subsection (d)(1) a report describing the role of the Department of Defense and the Department of Energy with respect to the nonproliferation policy of the United States.

(b) MATTERS TO BE COVERED IN REPORT.—The report shall—

(1) address how the Secretary of Defense integrates and coordinates existing intelligence and military capabilities of the Department of Defense and how the Secretary of Energy inte-

grates and coordinates the intelligence and emergency response capabilities of the Department of Energy in support of the nonproliferation policy of the United States;

(2) identify existing and planned capabilities within the Department of Defense, including particular capabilities of the military services, and the Department of Energy to (A) detect and monitor clandestine weapons of mass destruction programs, (B) respond to terrorism or accidents involving such weapons and to theft of related weapons materials, and (C) assist with interdiction and destruction of weapons of mass destruction and related weapons materials;

(3) describe, for the Department of Defense, the degree to which the Secretary of Defense has incorporated a nonproliferation mission into the overall mission of the unified combatant commands and how the Special Operations Command might support the commanders of the unified and specified commands in that mission;

(4) consider the appropriate roles of the Defense Advance Research Projects Agency (DARPA), the Defense Nuclear Agency (DNA), the On-Site-Inspection Agency (OSIA), and other Department of Defense agencies, as well as the national laboratories of the Department of Energy, in providing technical assistance and support for the efforts of the Department of Defense and the Department of Energy with respect to nonproliferation; and

(5) identify existing and planned mechanisms for improving the integration of Department of Defense and Department of Energy nonproliferation activities with those of other Federal departments and agencies.

(c) COORDINATION WITH OTHER AGENCIES.—The report required by subsection (a) shall, for purposes of subsection (b)(5), be coordinated with the heads of other appropriate departments and agencies.

(d) SUBMISSION OF REPORT.—(1) The report required by subsection (a) shall be submitted—

(A) to the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) to the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Energy and Commerce of the House of Representatives.

(2) The report shall be submitted not later than 180 days after the date of enactment of this Act and shall be submitted in unclassified form and, as necessary, in classified form.

SEC. 1504. NONPROLIFERATION TECHNOLOGY INITIATIVE.

(a) FUNDS FOR DEPARTMENT OF DEFENSE ACTIVITIES.—

(1) Of the amount appropriated pursuant to section 103(3) for Other Procurement, Air Force, $5,000,000 shall be available for the AFTAC Chem/Biological Collection/Processing program.

(2) Of the amount appropriated pursuant to section 201(3) for Research, Development, Test, and Evaluation, Air Force, $6,500,000 shall be available for the Joint Seismic Program.

(3) Of the amount appropriated pursuant to section 201(4) for Research, Development, Test, and Evaluation, Defense Agencies—

(A) $11,600,000 shall be available for LIDAR,

(B) $5,000,000 shall be available for Seismic programs of the Defense Advanced Research Projects Agency, and

(C) $15,000,000 shall be available for Nuclear Proliferation Detection Technology programs of the Defense Advanced Research Projects Agency.

(b) FUNDS FOR DEPARTMENT OF ENERGY ACTIVITIES.—Of the amount appropriated pursuant to section 3104(a)(2) for Verification and Control Technologies, $86,000,000 shall be available for nuclear nonproliferation detection technologies and activities. Of such amount, not more than $30,000,000 may be obligated until the report required by section 1503 is submitted.

SEC. 1505. [22 U.S.C. 5859a] INTERNATIONAL NONPROLIFERATION INITIATIVE.

(a) ASSISTANCE FOR INTERNATIONAL NONPROLIFERATION ACTIVITIES.—Subject to the limitations and requirements provided in this section, the Secretary of Defense, under the guidance of the President, may provide assistance to support international nonproliferation activities.

(b) ACTIVITIES FOR WHICH ASSISTANCE MAY BE PROVIDED.—Activities for which assistance may be provided under this section are activities such as the following:

(1) Activities carried out by international organizations that are designed to ensure more effective safeguards against proliferation and more effective verification of compliance with international agreements on nonproliferation.

(2) Activities of the Department of Defense in support of the United Nations Special Commission on Iraq (or any successor organization).

(3) Collaborative international nuclear security and nuclear safety projects to combat the threat of nuclear theft, terrorism, or accidents, including joint emergency response exercises, technical assistance, and training.

(4) Efforts to improve international cooperative monitoring of nuclear, biological, chemical, and missile proliferation through technical projects and improved information sharing.

(c) FORM OF ASSISTANCE.—(1) Assistance under this section may include funds and in-kind contributions of supplies, equipment, personnel, training, and other forms of assistance.

(2) Assistance under this section may be provided to international organizations in the form of funds only if the amount in the "Contributions to International Organizations" account of the Department of State is insufficient or otherwise unavailable to meet the United States fair share of assessments for international nuclear nonproliferation activities.

(3) No amount may be obligated for an expenditure under this section unless the Director of the Office of Management and Budget determines that the expenditure will be counted as discretionary spending in the national defense budget function (function 050).

(4) No assistance may be furnished under this section unless the Secretary of Defense determines and certifies to the Congress 30 days in advance that the provision of such assistance—

(A) is in the national security interest of the United States; and

(B) will not adversely affect the military preparedness of the United States.

(5) The authority to provide assistance under this section in the form of funds may be exercised only to the extent and in the amounts provided in advance in appropriations Act.

(d) SOURCES OF ASSISTANCE.—(1) Funds provided as assistance under this section for any fiscal year shall be derived from amounts made available to the Department of Defense for that fiscal year. Funds provided as assistance under this section for a fiscal year may also be derived from balances in working capital accounts of the Department of Defense.

(2) Supplies and equipment provided as assistance under this section may be provided, by loan or donation, from existing stocks of the Department of Defense and the Department of Energy.

(3) The total amount of the assistance provided in the form of funds under this section, including funds used for activities of the Department of Defense in support of the United Nations Special Commission on Iraq, may not exceed $25,000,000 for fiscal year 1994, $20,000,000 for fiscal year 1995, $15,000,000 for fiscal year 1996, $15,000,000 for fiscal year 1997, or $15,000,000 for fiscal year 1998.

(4)(A) In the event of a significant unforeseen development related to the activities of the United Nations Special Commission on Iraq (or any successor organization) for which the Secretary of Defense determines that financial assistance under this section is required at a level which would result in the total amount of assistance provided under this section during the then-current fiscal year exceeding the amount of any limitation provided by law on the total amount of such assistance for that fiscal year, the Secretary of Defense may provide such assistance with respect to that fiscal year notwithstanding that limitation. Funds for such purpose may be derived from any funds available to the Department of Defense for that fiscal year.

(B) Financial assistance may be provided under subparagraph (A) only after the Secretary of Defense provides notice in writing to the committees of Congress named in subsection (e)(2) of the significant unforeseen development and of the Secretary's intent to provide assistance in excess of the limitation for that fiscal year. However, if the Secretary determines in any case that under the specific circumstances of that case advance notice is not possible, such notice shall be provided as soon as possible and not later than 15 days after the date on which the assistance is provided. Any notice under this subparagraph shall include a description of the development, the amount of assistance provided or to be provided, and the source of the funds for that assistance.

(e) QUARTERLY REPORT.—(1) Not later than 30 days after the end of each quarter of a fiscal year during which the authority of the Secretary of Defense to provide assistance under this section is in effect, the Secretary of Defense shall transmit to the committees

of Congress named in paragraph (2) a report of the activities to reduce the proliferation threat carried out under this section. Each report shall set forth (for the preceding quarter and cumulatively)—

(A) the amounts spent for such activities and the purposes for which they were spent;

(B) a description of the participation of the Department of Defense and the Department of Energy and the participation of other Government agencies in those activities; and

(C) a description of the activities for which the funds were spent.

(2) The committees of Congress to which reports under paragraph (1) are to be transmitted are—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, the Committee on International Relations, and the Committee on Commerce of the House of Representatives.

(f) TERMINATION OF AUTHORITY.—The authority of the Secretary of Defense to provide assistance under this section terminates at the close of fiscal year 2001.

TITLE XVI—IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992

SEC. 1601. [50 U.S.C. 1701 note] SHORT TITLE.

This title may be cited as the "Iran-Iraq Arms Non-Proliferation Act of 1992".

SEC. 1602. [50 U.S.C. 1701 note] UNITED STATES POLICY.

(a) IN GENERAL.—It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

(b) SANCTIONS.—(1) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, chapter 7 of the Arms Export Control Act, and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) PUBLIC IDENTIFICATION.—The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

SEC. 1603. [50 U.S.C. 1701 note] APPLICATION TO IRAN OF CERTAIN IRAQ SANCTIONS.

The sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101–513), including denial of export licenses for United States persons and prohibitions on United States Government sales, shall be applied to the same extent and in the same manner with respect to Iran.

SEC. 1604. [50 U.S.C. 1701 note] SANCTIONS AGAINST CERTAIN PERSONS.

(a) PROHIBITION.—If any person transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) MANDATORY SANCTIONS.—The sanctions to be imposed pursuant to subsection (a) are as follows:

(1) PROCUREMENT SANCTION.—For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.

(2) EXPORT SANCTION.—For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

SEC. 1605. [50 U.S.C. 1701 note] SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

(a) PROHIBITION.—If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then—

(1) the sanctions described in subsection (b) shall be imposed on such country; and

(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c).

(b) MANDATORY SANCTIONS.—Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows:

(1) SUSPENSION OF UNITED STATES ASSISTANCE.—The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country.

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.—The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country.

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS.—The United States shall suspend, for a period of one year, compliance with its obligations under any memo-

randum of understanding with the sanctioned country for the codevelopment or coproduction of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part.

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS.—The United States shall suspend, for a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual-use technology between the United States and the sanctioned country that does not directly contribute to the security of the United States, and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period.

(5) UNITED STATES MUNITIONS LIST.—No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctioned country for a period of one year.

(c) DISCRETIONARY SANCTION.—The sanction referred to in subsection (a)(2) is as follows:

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Except as provided in paragraph (2), the President may exercise, in accordance with the provisions of that Act, the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country.

(2) EXCEPTION.—Paragraph (1) does not apply with respect to urgent humanitarian assistance.

SEC. 1606. [50 U.S.C. 1701 note] WAIVER.

The President may waive the requirement to impose a sanction described in section 1603, in the case of Iran, or a sanction described in section 1604(b) or 1605(b), in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and detailed rationale for such determination.

SEC. 1607. [50 U.S.C. 1701 note] REPORTING REQUIREMENT.

(a) ANNUAL REPORT.—Beginning one year after the date of the enactment of this Act, and every 12 months thereafter, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report detailing—

(1) all transfers or retransfers made by any person or foreign government during the preceding 12-month period which are subject to any sanction under this title; and

(2) the actions the President intends to undertake or has undertaken pursuant to this title with respect to each such transfer.

(b) REPORT ON INDIVIDUAL TRANSFERS.—Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this title, the President shall, within 30 days after such transfer, submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report—

(1) identifying the person or government and providing the details of the transfer; and

(2) describing the actions the President intends to undertake or has undertaken under the provisions of this title with respect to each such transfer.

(c) FORM OF TRANSMITTAL.—Reports required by this section may be submitted in classified as well as in unclassified form.

SEC. 1608. [50 U.S.C. 1701 note] DEFINITIONS.

For purposes of this title:

(1) The term "advanced conventional weapons" includes—

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways;

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this title.

(2) The term "cruise missile" means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag.

(3) The term "goods or technology" means—

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data.

(4) The term "person" means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries.

(5) The term "sanctioned country" means a country against which sanctions are required to be imposed pursuant to section 1605.

(6) The term "sanctioned person" means a person that makes a transfer described in section 1604(a).

(7) The term "United States assistance" means—

(A) any assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), other than urgent humanitarian assistance or medicine;

(B) sales and assistance under the Arms Export Control Act;

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and

(D) financing under the Export-Import Bank Act.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle D—International Fissile Material and Warhead Control

SEC. 3151. NEGOTIATIONS.

(a) IN GENERAL.—The Congress urges the President to enter into negotiations with member states of the Commonwealth of Independent States, to complement ongoing and future arms reduction negotiations and agreements, with the goal of achieving verifiable agreements in the following areas:

(1) Dismantlement of nuclear weapons.

(2) The safeguard and permanent disposal of nuclear materials.

(3) An end by the United States and member states of the Commonwealth of Independent States to the production of plutonium and highly enriched uranium for nuclear weapons.

(4) The extension of negotiations on these issues to all nations capable of producing nuclear weapons materials.

(b) EXCHANGES OF INFORMATION.—The Congress urges the President, in order to establish a data base on production capabilities of member states of the Commonwealth of Independent States and their stockpiles of fissile materials and nuclear weapons, to seek to achieve agreements with such states to reciprocally release information on—

(1) United States and the member states nuclear weapons stockpiles, including the number of warheads and bombs by type, and schedules for weapons production and dismantlement;

(2) the location, mission, and maximum annual production capacity of United States and member states facilities that are essential to the production of tritium for replenishment of that nation's tritium stockpile;

(3) the inventory of United States and member states facilities dedicated to the production of plutonium and highly enriched uranium for weapons purposes; and

(4) United States and members states stockpiles of plutonium and highly enriched uranium used for nuclear weapons.

(c) TECHNICAL WORKING GROUPS.—The Congress urges the President, in order to facilitate the achievement of agreements referred to in subsection (a), to establish with member states of the Commonwealth of Independent States and with other nations capable of producing nuclear weapons material bilateral or multilateral technical working groups to examine and demonstrate cooperative technical monitoring and inspection arrangements that could be applied to the verification of—

(1) information on mission, location, and maximum annual production capacity of nuclear material production facilities and the size of stockpiles of plutonium and highly enriched uranium;

(2) nuclear arms reduction agreements that would include provisions requiring the verifiable dismantlement of nuclear warheads; and

(3) bilateral or multilateral agreements to halt the production of plutonium and highly enriched uranium for nuclear weapons.

(d) REPORT.—The President shall submit to the Congress, not later than March 31, 1993, a report on the progress made by the President in implementing the actions called for in subsections (a) through (c).

(e) PRODUCTION BY COMMONWEALTH OF INDEPENDENT STATES.—The Congress urges the Presidents of the member states of the Commonwealth of Independent States—

(1) to institute a moratorium on production of plutonium and highly enriched uranium for nuclear weapons; and

(2) to pledge to continue such moratorium for so long as the United States does not produce such materials.

* * * * * * *

SEC. 3154. PRODUCTION OF TRITIUM.

Nothing in this part may be construed as intending to affect the production of tritium.

---

i. National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE X—GENERAL PROVISIONS

* * * * * * *

PART G—MISCELLANEOUS

* * * * * * *

SEC. 1097. [22 U.S.C. 2751 note] ANNUAL REPORT ON THE PROLIFERATION OF MISSILES AND ESSENTIAL COMPONENTS OF NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS.

(a) REPORT REQUIRED.—(1) The President shall submit to the Committee on Armed Services and the Committee on International Relations of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate an annual report on the transfer by any country of weapons, technology, or materials that can be used to deliver, manufacture, or weaponize nuclear, biological, or chemical weapons (hereinafter in this section referred to as "NBC weapons") to any country other than a country referred to in subsection (d) that is seeking to acquire such weapons, technology, or materials, or other system that the Secretary of Defense has reason to believe could be used to deliver NBC weapons.

(2) The first such report shall be submitted not later than 90 days after the date of the enactment of this Act.

(b) MATTERS TO BE COVERED.—Each such report shall cover—

(1) the transfer of all aircraft, cruise missiles, artillery weapons, unguided rockets and multiple rocket systems, and related bombs, shells, warheads and other weaponization technology and materials that the Secretary has reason to believe may be intended for the delivery of NBC weapons;

(2) international transfers of MTCR equipment or technology to any country that is seeking to acquire such equipment or any other system that the Secretary has reason to believe may be used to deliver NBC weapons; and

(3) the transfer of technology, test equipment, radioactive materials, feedstocks and cultures, and all other specialized materials that the Secretary has reason to believe could be used to manufacture NBC weapons.

(c) CONTENT OF REPORT.—Each such report shall include the following:

(1) The status of missile, aircraft, and other weapons delivery and weaponization programs in any such country, including efforts by such country to acquire MTCR equipment, NBC-capable aircraft, or any other weapon or major weapon component which is dedicated to the delivery of NBC weapons, whose primary use is the delivery of NBC weapons, or that the Secretary has reason to believe could be used to deliver NBC weapons.

(2) The status of NBC weapons development, manufacture, and deployment programs in any such country, including efforts to acquire essential test equipment, manufacturing equipment and technology, weaponization equipment and technology, and radioactive material, feedstocks or components of feedstocks, and biological cultures and toxins.

(3) A description of assistance provided by any person or government, after the date of the enactment of this Act, to any such country in the development of—

(A) missile systems, as defined in the MTCR or that the Secretary has reason to believe may be used to deliver NBC weapons;

(B) aircraft and other delivery systems and weapons that the Secretary has reason to believe could be used to deliver NBC weapons; and

(C) NBC weapons.

(4) A listing of those persons and countries which continue to provide such equipment or technology described in paragraph (3) to any country as of the date of submission of the report.

(5) A description of the diplomatic measures that the United States, and that other adherents to the MTCR and other agreements affecting the acquisition and delivery of NBC weapons, have made with respect to activities and private persons and governments suspected of violating the MTCR and such other agreements.

(6) An analysis of the effectiveness of the regulatory and enforcement regimes of the United States and other countries that adhere to the MTCR and other agreements affecting the acquisition and delivery of NBC weapons in controlling the export of MTCR and other NBC weapons and delivery system equipment or technology.

(7) A summary of advisory opinions issued under section 11B(b)(4) of the Export Administration Act of 1979 (50 U.S.C. App. 2401b(b)(4)) and under section 73(d) of the Arms Export Control Act (22 U.S.C. 2797b(d)) .

(8) An explanation of United States policy regarding the transfer of MTCR equipment or technology to foreign missile programs, including programs involving launches of space vehicles.

(d) EXCLUSIONS.—The countries excluded under subsection (a) are Australia, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(e) CLASSIFICATION OF REPORT.—The President shall make every effort to submit all of the information required by this section in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit concurrently a detailed summary, in unclassified form, of that classified information.

(f) DEFINITIONS.—For purposes of this section:

(1) The terms "missile", "MTCR", and "MTCR equipment or technology" have the meanings given those terms in section 74 of the Arms Export Control Act (22 U.S.C. 2797c).

(2) The term "weaponize" or "weaponization" means to incorporate into, or the incorporation into, usable ordnance or other militarily useful means of delivery.

(g) REPEAL OF SUPERSEDED LAW.—[Omitted—Amendment]

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

PART C—MISCELLANEOUS

* * * * * * *

SEC. 3140. REPORT ON SCHEDULE FOR RESUMPTION OF NUCLEAR TESTING TALKS AND TEST BAN READINESS PROGRAM.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States and the Soviet Union share a special responsibility to resume the Nuclear Testing Talks to continue negotiations toward additional limitations on nuclear weapons testing.

(b) REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall submit to Congress a report containing a proposed schedule for resumption of the Nuclear Testing Talks and identifying the goals to be pursued in those talks.

(c) NUCLEAR TEST BAN READINESS PROGRAM.—Of the funds appropriated to the Department of Energy for fiscal year 1992 for weapons activities, $20,000,000 shall be available to conduct the nuclear test ban readiness program established pursuant to section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note).

SEC. 3141. WARHEAD DISMANTLEMENT AND MATERIAL DISPOSAL.

(a) FINDINGS.—The Congress makes the following findings:

(1) On September 27, 1991, the President announced as part of a unilateral initiative designed to "enhance stability and reduce the risk of nuclear war," that the United States should explore with the Soviet Union "joint technical cooperation on the safe and environmentally responsible storage, transportation, dismantling, and destruction of nuclear weapons".

(2) On October 5, 1991, the President of the Soviet Union stated in response that "We hereby stress readiness to embark on a specific dialogue with the United States on the elaboration of safe and ecologically responsible technologies for the storage and transportation of nuclear warheads and nuclear charges, and to design jointly measures to enhance nuclear safety".

(3) The President's initiative and the Soviet response hold out the prospect of enhancing stability and reducing the risk of nuclear war.

(b) CONGRESSIONAL ENDORSEMENT.—Congress strongly endorses the initiative proposed by the President and the Soviet response and looks forward—

(1) to hearing the proposed initiatives of the President during the congressional review of the President's proposed budget for fiscal year 1993; and

(2) to helping facilitate such initiatives through appropriate legislative measures which are requested by the President.

(c) WARHEAD DISMANTLEMENT.—Of the funds appropriated to the Department of Energy for fiscal year 1992 for weapons activities, $10,000,000 shall be available to conduct a program to develop and demonstrate a means for verifiable dismantlement of nuclear warheads.

SEC. 3142. REPORT ON NUCLEAR WEAPONS MATTERS.

(a) REPORT.—Not later than April 1, 1992, the President shall submit to the congressional defense committees a report containing the following:

(1) Information on the national security requirements of each of the following items, for the period beginning on September 30, 1991, and ending on September 30, 2001:

(A) The planned stockpile of nuclear weapons.

(B) The amount of tritium necessary to maintain the planned stockpile, including—

(i) the amount of tritium available from inventory;

(ii) the amount of tritium that must be produced and when; and

(iii) an assessment of the need for and duration of operation of the K-reactor, located at the Savannah River Site in South Carolina.

(C) The feasibility and desirability of use of W–76 warheads in place of W-88 warheads in the Trident II missiles carried by Trident Fleet Ballistic Missile submarines.

(D) The need for and duration of operation of the Rocky Flats Plant facilities (other than Building 559) located at Golden, Colorado, for the purposes of—

(i) production of W–88 warheads; and

(ii) plutonium operations other than warhead production.

(E) The earliest practicable date for the commencement of operation of facilities that replace the K-reactor and the Rocky Flats Plant, including an assessment of the effect of a delay (beyond the second quarter of fiscal year 1992) in the selection of the site and the technology for the new production reactor.

(2) A plan for assistance to the workforce at Rocky Flats and the K-reactor, including retraining for new employment opportunities at the sites, that could be provided in the event that either facility ceases production.

(b) FORM OF REPORT.—The report required by subsection (a) shall be submitted in classified and unclassified form.

---

j. National Defense Authorization Act for Fiscal Years 1990 and 1991

(Public Law 101–189, approved Nov. 20, 1989)

TITLE X—MATTERS RELATING TO ARMS CONTROL

* * * * * * *

SEC. 1014. [22 U.S.C. 2595 note] UNITED STATES PROGRAM FOR ON-SITE INSPECTIONS UNDER ARMS CONTROL AGREEMENTS

(a) FINDINGS CONCERNING ON-SITE INSPECTION PERSONNEL.—Congress makes the following findings:

(1) The United States is currently engaged in multilateral and bilateral negotiations seeking to achieve treaties or agreements to reduce or eliminate various types of military weapons and to make certain reductions in military personnel levels.

These negotiations include negotiations for (A) reductions in strategic forces, conventional armaments, and military personnel levels, (B) regimes for monitoring nuclear testing, and (C) the complete elimination of chemical weapons.

(2) Requirements for monitoring these possible treaties or agreements will be extensive and will place severe stress on the monitoring capabilities of United States national technical means.

(3) In the case of the INF Treaty, the United States and the Soviet Union negotiated, and are currently using, on-site inspection procedures to complement and support monitoring by national technical means. Similar on-site inspection procedures are being negotiated for inclusion in possible future treaties and agreements referred to in paragraph (1).

(4) During initial implementation of the provisions of the INF Treaty, the United States was not fully prepared for the personnel requirements for the conduct of on-site inspections. The Director of Central Intelligence has stated that on-site inspection requirements for any strategic arms reduction treaty or agreement will be far more extensive than those for the INF Treaty. The number of locations within the Soviet Union that would possibly be subject to on-site inspections under a START agreement have been estimated to be approximately 2,500 (compared to 120 for the INF Treaty).

(5) On-site inspection procedures are likely to be an integral part of any future arms control treaty or agreement.

(6) Personnel requirements will be extensive for such on-site inspection procedures, both in terms of numbers of personnel and technical and linguistic skills. Since verification requirements for the INF Treaty are already placing severe stress on current personnel resources, the requirements for verification under START and other possible future treaties and agreements may quickly exceed the current number of verification personnel having necessary technical and language skills.

(7) There is a clear need for a database of the names of individuals who are members of the Armed Forces or civilian employees of the United States Government, or of other citizens and nationals of the United States, who are qualified (by reason of technical or language skills) to participate in on-site inspections under an arms control treaty or agreement.

(8) The organization best suited to establish such a database is the On-Site Inspection Agency (OSIA) of the Department of Defense, which was created by the President to implement (for the United States) the on-site inspection provisions of the INF Treaty.

(b) STATUS OF THE OSIA.—(1) Congress finds that—

(A) the Director of the OSIA (currently a brigadier general of the Army) is appointed by the Secretary of Defense with the concurrence of the Secretary of State and the approval of the President;

(B) the Secretary of Defense provides to the Director appropriate policy guidance formulated by the interagency arms control mechanism established by the President;

(C) most of the personnel of the OSIA are members of the Armed Forces (who are trained and paid by the military departments within the Department of Defense) and include linguists, weapons specialists, and foreign area specialists;

(D) the Department of Defense provides the OSIA with substantially all of its administrative and logistic support (including military air transportation for inspections in the Soviet Union and Eastern Europe); and

(E) the facilities in Europe and the United States at which OSIA personnel escort personnel of the Soviet Union conducting inspections under the on-site inspection terms of the INF Treaty are under the jurisdiction of the Department of Defense (or under the jurisdiction of entities that are contractors with the Department of Defense).

(2) In light of the findings in paragraph (1) and the report submitted pursuant to section 909 of Public Law 100–456 entitled "Report to the Congress on U.S. Monitoring and Verification Activities Related to the INF Treaty" (submitted on July 27, 1989), Congress hereby determines that by locating the On-Site Inspection Agency within the Department of Defense for the purposes of administrative and logistic support and operational guidance, and integrating on-site inspection responsibilities under the INF Treaty with existing organizational activities of that Department, the President has been able to ensure that sensitive national security assets are protected and that obligations of the United States under that treaty are fulfilled in an efficient and cost-effective manner.

(c) ESTABLISHMENT OF PERSONNEL DATABASE.—(1) In light of the findings in subsection (a), the Director of the On-Site Inspection Agency shall establish a database consisting of the names of individuals who could be assigned or detailed (in the case of Government personnel) or employed (in the case of non-Government personnel) to participate in the conduct of on-site inspections under any future arms control treaty or agreement that includes provisions for such inspections.

(2) The database should be composed of the names of individuals with skills (including linguistic and technical skills) necessary for the conduct of on-site inspections.

(d) INF TREATY DEFINED.—For purposes of this section, the term "INF Treaty" means the Treaty Between the United States and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed in Washington, DC, on December 8, 1987.

---

k. National Defense Authorization Act, Fiscal Year 1989

(Public Law 100–456; approved Sept. 29, 1988)

TITLE XIV—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

SEC. 1436. [42 U.S.C. 2121 note] NUCLEAR TEST BAN READINESS PROGRAM

(a) FINDINGS.—The Congress makes the following findings:

(1) On September 17, 1987, the United States and the Soviet Union announced that they would resume full-scale, stage-by-state negotiations on issues relating to nuclear testing, including further intermediate limitations on nuclear testing leading to the ultimate objective of a comprehensive nuclear test ban.

(2) It was agreed that the first step in these negotiations would be to reach agreement on verification measures that will make possible the ratification of the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976.

(3) To achieve the agreement on verification measures, the United States and the Soviet Union have agreed to design and conduct a Joint Verfication Experiment at the test sites of each country during the summer of 1988.

(4) At the Moscow summit in May 1988, President Reagan and General Secretary Gorbachev reaffirmed their commitment to negotiations and "effective verification measures which will make it possible to ratify the Threshold Test Ban Treaty of 1974 and Peaceful Nuclear Explosions Treaty of 1976, and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process".

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive ban on nuclear explosives testing is negotiated and ratified within the framework agreed to by the United States and Soviet Union.

(c) PURPOSES OF PROGRAM.—The purposes of the program under subjection (b) shall be the following:

(1) To assure that the United States maintains a vigorous program of stockpile inspection and non-explosive testing so that, if a low-threshold or comprehensive test ban is entered into, the United States remains able to detect and identify potential problems in stockpile reliability and safety in existing designs of nuclear weapons.

(2) To assure that the specific materials, components, processes, and personnel needed for the remanufacture of existing nuclear weapons or the substitution of alternative nuclear warheads are available to support such remanufacture or substitution if such action becomes necessary in order to satisfy reliability and safety requirements under a low-threshold or comprehensive test ban agreement.

(3) To assure that a vigorous program of research in areas related to nuclear weapons science and engineering is supported so that, if a low-threshold or comprehensive test ban agreement is entered into, the United States is able to maintain a base of technical knowledge about nuclear weapons design and nuclear weapons effects.

(d) CONDUCT OF PROGRAM.—The Secretary of Energy shall carry out the program provided for in subsection (b). The program

shall be carried out with the participation of representatives of the Department of Defense, the nuclear weapons production facilities, and the national nuclear weapons laboratories.

4. EXPORT CONTROL MATTERS

a. Arms Export Control Act (Public Law 90–629)

AN ACT To consolidate and revise foreign assistance legislation relating to reimbursable military exports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arms Export Control Act".

Chapter 1.—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

SECTION 1. [22 U.S.C. 2751] THE NEED FOR INTERNATIONAL DEFENSE COOPERATION AND MILITARY EXPORT CONTROLS.—As declared by the Congress in the Arms Control and Disarmament Act, an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

The Congress recognizes, however, that the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships in order to maintain and foster the environment of international peace and security essential to social, economic, and political progress. Because of the growing cost and complexity of defense equipment, it is increasingly difficult and uneconomic for any country, particularly a developing country, to fill all of its legitimate defense requirements from its own design and production base. The need for international defense cooperation among the United States and those friendly countries to which it is allied by mutual defense treaties is especially important, since the effectiveness of their armed forces to act in concert to deter or defeat aggression is directly related to the operational compatibility of their defense equipment.

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end,

this Act authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

It is the sense of the Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended, the extent and character of the military requirement, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or incipient arms races.

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments. United States programs for or procedures governing the export, sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

It is the sense of the Congress that the President should seek to initiate multilateral discussions for the purpose of reaching agreements among the principal arms suppliers and arms purchasers and other countries with respect to the control of the international trade in armaments. It is further the sense of Congress that the President should work actively with all nations to check and control the international sale and distribution of conventional weapons of death and destruction and to encourage regional arms control arrangements. In furtherance of this policy, the President should undertake a concerted effort to convene an international conference of major arms-supplying and arms-purchasing nations which shall consider measures to limit conventional arms transfers in the interest of international peace and stability.

It is the sense of the Congress that the aggregate value of defense articles and defense services—

(1) which are sold under section 21 or section 22 of this Act; or

(2) which are licensed or approved for export under section 38 of this Act to, for the use, or for benefit of the armed forces, police, intelligence, or other internal security forces of a foreign country or international organization under a commercial sales contract;

in any fiscal year should not exceed current levels.

It is the sense of the Congress that the President maintain adherence to a policy of restraint in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security inter-

ests of the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to restrain the flow of conventional arms to less developed countries.

SEC. 2. [22 U.S.C. 2752] COORDINATION WITH FOREIGN POLICY.—(a) Nothing contained in this Act shall be construed to infringe upon the powers or functions of the Secretary of State.

(b) Under the direction of the President, the Secretary of State (taking into account other United States activities abroad, such as military assistance, economic assistance, and food for peace program) shall be responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this Act, including, but not limited to, determining—

(1) whether there will be a sale to or financing for a country and the amount thereof;

(2) whether there will be a lease to a country;

(3) whether there will be a cooperative project and the scope thereof; and

(4) whether there will be delivery or other performance under the sale, lease, cooperative project, or export,

to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and to the end that the foreign policy of the United States would be best served thereby.

(c) The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the leadership of the Chief of the United States Diplomatic Mission. The Chief of the diplomatic mission shall make sure that recommendations of such representatives pertaining to sales are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.

SEC. 3. [22 U.S.C. 2753] ELIGIBILITY.—(a) No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act), unless—

(1) the President finds that the furnishing of defense articles and defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those

for which furnished unless the consent of the President has first been obtained;

(3) the country or international organization shall have agreed that it will maintain the security of such article or service and will provide substantially the same degree of security protection afforded to such article or service by the United States Government; and

(4) the country or international organization is otherwise eligible to purchase or lease defense articles or defense services.

In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under paragraph (2) to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under paragraph (2) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President. The President shall promptly submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate on the implementation of each agreement entered into pursuant to clause (2) of this subsection.

(b) The consent of the President under paragraph (2) of subsection (a) or under paragraph (1) of section 505(a) of the Foreign Assistance Act of 1961 (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this Act if—

(1) such articles constitute components incorporated into foreign defense articles;

(2) the recipient is the government of a member country of the North Atlantic Treaty Organization, the Government of Australia, the Government of Japan, or the Government of New Zealand;

(3) the recipient is not a country designated under section 620A of the Foreign Assistance Act of 1961;

(4) the United States-origin components are not—

(A) significant military equipment (as defined in section 47(9));

(B) defense articles for which notification to Congress is required under section 36(b); and

(C) identified by regulation as Missile Technology Control Regime items; and

(5) the foreign country or international organization provides notification of the transfer of the defense articles to the United States Government not later than 30 days after the date of such transfer.

(c)(1)(A) No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (i) by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4 for a purpose not authorized under such agreement; (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (iii) by failing to maintain the security of such articles or services.

(B) No cash sales or deliveries pursuant to previous sales may be made with respect to any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantity or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

(2) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3)(A) A country shall be deemed to be ineligible under subparagraph (A) of paragraph (1) of this subsection, or both subparagraphs (A) and (B) of such paragraph in the case of a violation described in both such paragraphs, if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution.

(B) Notwithstanding a determination by the President of ineligibility under subparagraph (B) of paragraph (1) of this subsection, cash sales and deliveries pursuant to previous sales may be made if the President certifies in writing to the Congress that a termination thereof would have significant adverse impact on United States security, unless the Congress adopts or has adopted a joint resolution pursuant to subparagraph (A) of this paragraph with respect to such ineligibility.

(4) A country shall remain ineligible in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(d)(1) The President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act

of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, unless the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

(A) the name of the country or international organization proposing to make such transfer,

(B) a description of the article or service proposed to be transferred, including its acquisition cost,

(C) the name of the proposed recipient of such article or service,

(D) the reasons for such proposed transfer, and

(E) the date on which such transfer is proposed to be made.

Any certification submitted to Congress pursuant to this paragraph shall be unclassified, except that information regarding the dollar value and number of articles or services proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(2)(A) Except as provided in subparagraph (B), unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until 30 calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such 30-day period, a joint resolution prohibiting the proposed transfer.

(B) In the case of a proposed transfer to the North Atlantic Treaty Organization, or any member country of such Organization, Japan, Australia, or New Zealand, unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until fifteen calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such fifteen-day period, a joint resolution prohibiting the proposed transfer.

(C) If the President states in his certification under subparagraph (A) or (B) that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, thus waiving the requirements of that subparagraph, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate immediate consent to the transfer and a discussion of the national security interests involved.

(D)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section

601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(3)(A) The President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act, unless before giving such consent the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a certification containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—

(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(ii) at least 30 calendar days before such consent is given in the case of a transfer to any other country,

unless the President states in his certification that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists (thus waiving the requirements of clause (i) or (ii), as the case may be, and of subparagraph (B)) the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that consent to the proposed transfer become effective immediately and a discussion of the national security interests involved.

(B) Consent to a transfer subject to subparagraph (A) shall become effective after the end of the 15-day or 30-day period specified in subparagraph (A)(i) or (ii), as the case may be, only if the Congress does not enact, within that period, a joint resolution prohibiting the proposed transfer.

(C)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) This subsection shall not apply—

(A) to transfers of maintenance, repair, or overhaul defense services, or of the repair parts or other defense articles used in furnishing such services, if the transfer will not result in any increase, relative to the original specifications, in the

military capability of the defense articles and services to be maintained, repaired, or overhauled;

(B) to temporary transfers of defense articles for the sole purpose of receiving maintenance, repair, or overhaul; or

(C) to arrangements among members of the North Atlantic Treaty Organization or between the North Atlantic Treaty Organization and any of its member countries—

(i) for cooperative cross servicing, or

(ii) for lead-nation procurement if the certification transmitted to the Congress pursuant to section 36(b) of this Act with regard to such lead-nation procurement identified the transferees on whose behalf the lead-nation procurement was proposed.

(e) If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section or under section 505 of the Foreign Assistance Act of 1961, he shall report such information immediately to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

(f) No sales or leases shall be made to any country that the President has determined is in material breach of its binding commitments to the United States under international treaties or agreements concerning the nonproliferation of nuclear explosive devices (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994) and unsafeguarded special nuclear material (as defined in section 830(8) of that Act).

(g) Any agreement for the sale or lease of any article on the United States Munitions List entered into by the United States Government after the date of enactment of this subsection shall state that the United States Government retains the right to verify credible reports that such article has been used for a purpose not authorized under section 4 or, if such agreement provides that such article may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

SEC. 4. [22 U.S.C. 2754] PURPOSES FOR WHICH MILITARY SALES BY THE UNITED STATES ARE AUTHORIZED.—Defense articles and defense services shall be sold or leased by the United States Government under this Act to friendly countries solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the

total economic and social development effort: *Provided,* That none of the funds contained in this authorization shall be used to guarantee, or extend credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea unless the President determines that such financing is important to the national security of the United States and reports within thirty days each such determination to the Congress.

SEC. 5. [22 U.S.C. 2755] PROHIBITION AGAINST DISCRIMINATION.—(a) It is the policy of the United States that no sales should be made, and no credits (including participations in credits) or guaranties extended to or for any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) from participating in the furnishing of defense articles or defense services under this Act on the basis of race, religion, national origin, or sex.

(b)(1) No agency performing functions under this Act shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(2) Each contract entered into by any such agency for the performance of any function under this Act shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(c) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any instance in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the performance of any sale or licensed transaction under this Act. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

(d)(1) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall, within 60 days after the receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Secretary of State, with respect to the country designated in such request, setting forth—

(A) all the available information about the exclusionary policies or practices of the government of such country when such policies or practices are based upon race, religion, na-

tional origin or sex and prevent any such person from participating in the performance of any sale or licensed transaction under this Act;

(B) the response of the United States thereto and the results of such response;

(C) whether, in the opinion of the President, notwithstanding any such policies or practices—

(i) extraordinary circumstances exist which necessitate a continuation of such sale or licensed transaction, and, if so, a description of such circumstances and the extent to which such sale or licensed transaction should be continued (subject to such conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to continue such sale or licensed transaction; and

(D) such other information as such committee may request.

(2) In the event a statement with respect to a sale or licensed transaction is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within 60 days after receipt of such request, such sale or licensed transaction shall be suspended unless and until such statement is transmitted.

(3)(A) In the event a statement with respect to a sale or licensed transaction is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating or restricting such sale or licensed transaction.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term "certification", as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

SEC. 6. [22 U.S.C. 2756] FOREIGN INTIMIDATION AND HARASSMENT OF INDIVIDUALS IN THE UNITED STATES.—No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this Act with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination promptly to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate.

Chapter 2.—FOREIGN MILITARY SALES AUTHORIZATIONS

SEC. 21. [22 U.S.C. 2761] SALES FROM STOCKS.—(a)(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(C) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961, only those additional costs that are incurred by the United States Government in furnishing such assistance.

(2) For purposes of subparagraph (A) of paragraph (1), the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense.

(b) Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c)(1) Personnel performing defense services sold under this Act may not perform any duties of a combatant nature, including any duties related to training and advising that may engage United States personnel in combat activities, outside the United States in connection with the performance of those defense services.

(2) Within forty-eight hours of the existence of, or a change in status of significant hostilities or terrorist acts or a series of such acts, which may endanger American lives or property, involving a country in which United States personnel are performing defense services pursuant to this Act or the Foreign Assistance Act of 1961, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, classified if necessary, setting forth—

(A) the identity of such country;

(B) a description of such hostilities or terrorist acts; and

(C) the number of members of the United States Armed Forces and the number of United States civilian personnel that may be endangered by such hostilities or terrorist acts.

(d) If the President determines it to be in the national interest pursuant to subsection (b) of this section, billings for sales made under letters of offer issued under this section after the enactment of this subsection may be dated and issued upon delivery of the defense article or rendering of the defense service and shall be due and payable upon receipt thereof by the purchasing country or international organization. Interest shall be charged on any net amount due and payable which is not paid within sixty days after the date of such billing. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the billing and shall be computed from the date of billing. The President may extend such sixty-day period to one hundred and twenty days if he determines that emergency requirements of the purchaser for acquisition of such defense arti-

cles or defense services exceed the ready availability to the purchaser of funds sufficient to pay the United States in full for them within such sixty-day period and submits that determination to the Congress together with a special emergency request for the authorization and appropriation of additional funds to finance such purchases under this Act.

(e)(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 22 of this Act shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operations costs) of administration of sales made under this Act to all purchasers of such articles and services as specified in section 43(b) and section 43(c) of this Act;

(B) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 or from funds made available on a nonrepayable basis under section 23 of this Act); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(2)(A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States GovernmentArms Export interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

(3)(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the Maintenance and Supply Agency of the North Atlantic Treaty Organization in support of—

(i) a weapon system partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 43(b) of this Act in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term "weapon system partnership agreement" means an agreement between two or more member countries of the Maintenance and Supply Agency of the North Atlantic Treaty Organization that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of a specific weapon system common to the participating countries; and

(ii) the term "NATO/SHAPE project" means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

(f) Any contracts entered into between the United States and a foreign country under the authority of this section or section 22 of this Act shall be prepared in a manner which will permit them to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g) The President may enter into North Atlantic Treaty Organization standardization agreements in carrying out section 814 of the Act of October 7, 1975 (Public Law 94–106), and may enter into similar agreements with countries which are major non-NATO allies, for the cooperative furnishing of training on a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.

(h)(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization, if such government provides such services in accordance with an agreement on a

reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2) In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, to the North Atlantic Treaty Organization or to any member government of that Organization if that Organization or member government provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

(i)(1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section or under authority of chapter 2B, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) the country or international organization to which the sale is proposed to be made;

(B) the amount of the proposed sale;

(C) a description of the defense article or service proposed to be sold;

(D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States; and

(E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certification required to be transmitted by paragraph (E) of paragraph (1) is in effect.

(j) [Repealed—P.L. 104–106]

(k) Before entering into the sale under this Act of defense articles that are excess to the stocks of the Department of Defense, the

President shall determine that the sale of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.

(l) REPAIR OF DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may acquire a repairable defense article from a foreign country or international organization if such defense article—

(A) previously was transferred to such country or organization under this Act;

(B) is not an end item; and

(C) will be exchanged for a defense article of the same type that is in the stocks of the Department of Defense.

(2) LIMITATION.—The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act.

(3) REQUIREMENT.—(A) The foreign government or international organization receiving a new or repaired defense article in exchange for a repairable defense article pursuant to paragraph (1) shall, upon the acceptance by the United States Government of the repairable defense article being returned, be charged the total cost associated with the repair and replacement transaction.

(B) The total cost charged pursuant to subparagraph (A) shall be the same as that charged the United States Armed Forces for a similar repair and replacement transaction, plus an administrative surcharge in accordance with subsection (e)(1)(A) of this section.

(4) RELATIONSHIP TO CERTAIN OTHER PROVISIONS OF LAW.—The authority of the President to accept the return of a repairable defense article as provided in subsection (a) shall not be subject to chapter 137 of title 10, United States Code, or any other provision of law relating to the conclusion of contracts.

(m) RETURN OF DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may accept the return of a defense article from a foreign country or international organization if such defense article—

(A) previously was transferred to such country or organization under this Act;

(B) is not significant military equipment (as defined in section 47(9) of this Act); and

(C) is in fully functioning condition without need of repair or rehabilitation.

(2) LIMITATION.—The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act.

(3) CREDIT FOR TRANSACTION.—Upon acquisition and acceptance by the United States Government of a defense article under paragraph (1), the appropriate Foreign Military Sales account of the provider shall be credited to reflect the transaction.

(4) RELATIONSHIP TO CERTAIN OTHER PROVISIONS OF LAW.—The authority of the President to accept the return of a defense article as provided in paragraph (1) shall not be subject to chapter 137 of title 10, United States Code, or any other provision of law relating to the conclusion of contracts.

SEC. 22. [22 U.S.C. 2762] PROCUREMENT FOR CASH SALES.—(a) Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days

after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

(c) The provisions of the Renegotiation Act of 1951 do not apply to procurement contracts, heretofore or hereafter entered into under this section, section 29, or predecessor provisions of law.

(d) COMPETITIVE PRICING.—(1) Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(2) Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1). Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

SEC. 23. [22 U.S.C. 2763] CREDIT SALES.—(a) The President is authorized to finance the procurement of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this Act.

(b) The President shall require repayment in United States dollars within a period not to exceed twelve years after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c)(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

(A) the term "concessional rate of interest" means any rate of interest which is less than market rates of interest; and

(B) the term "market rate of interest" means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e) (1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 24, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(f) For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that have entered into contracts with foreign governments under which defense articles, defense services, or design and construction services are to be procured by such firms for such governments from financing under this section.

(g)(1) For each country and international organization that has been approved for cash flow financing under this section, any letter of offer and acceptance or other purchase agreement, or any amendment thereto, for a procurement of defense articles, defense services, or design and construction services in excess of $100,000,000 that is to be financed in whole or in part with funds made available under this Act or the Foreign Assistance Act of 1961 shall be submitted to the congressional committees specified in section 634A(a) of the Foreign Assistance Act of 1961 in accordance with the procedures applicable to reprogramming notifications under that section.

(2) For purposes of this subsection, the term "cash flow financing" has the meaning given such term in subsection (d) of section 25, as added by section 112(b) of Public Law 99–83.

(h) Of the amounts made available for a fiscal year to carry out this section, not more than $100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this Act.

SEC. 24. [22 U.S.C. 2764] GUARANTIES.—(a) The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services to friendly countries

and international organizations. Fees shall be charged for such guaranties.

(b) The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank) promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 23, and may guarantee payment thereof.

(c) Funds obligated under this section before the date of enactment of the International Security and Development Cooperation Act of 1980 which constitute a single reserve for the payment of claims under guaranties issued under this section shall remain available for expenditure for the purposes of this section on and after that date. That single reserve may, on and after the date of enactment of the International Security and Development Cooperation Act of 1985, be referred to as the "Guaranty Reserve Fund." Funds provided for necessary expenses to carry out the provisions of section 23 of the Arms Export Control Act and of section 503 of the Foreign Assistance Act of 1961, as amended, may be used to pay claims on the Guaranty Reserve Fund to the extent that funds in the Guaranty Reserve Fund are inadequate for that purpose. For purposes of any provision in this Act or any other Act relating to a prohibition or limitation on the availability of funds under this Act, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this Act. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

SEC. 25. [22 U.S.C. 2765] ANNUAL ESTIMATE AND JUSTIFICATION FOR SALES PROGRAM.—(a) Except as provided in subsection (d) of this section, no later than February 1 of each year, the President shall transmit to the appropriate congressional committees, as a part of the annual presentation materials for security assistance programs proposed for the next fiscal year, a report which sets forth—

(1) an Arms Sales Proposal covering all sales and licensed commercial exports under this Act of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during the current calendar year, together with an indication of which sales and licensed commercial exports are deemed most likely actually to result in the issuance of a letter of offer or of an export license during such year;

(2) an estimate of the total amount of sales and licensed commercial exports expected to be made to each foreign nation from the United States;

(3) the United States national security considerations involved in expected sales or licensed commercial exports to each country, an analysis of the relationship between anticipated sales to each country and arms control efforts concerning such country and an analysis of the impact of such anticipated sales on the stability of the region that includes such country;

(4) an estimate with regard to the international volume of arms traffic to and from nations purchasing arms as set forth in paragraphs (1) and (2) of this subsection, together with best estimates of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding fiscal year;

(5)(A) an estimate of the aggregate dollar value and quantity of defense articles and defense services, military education and training, grant military assistance, and credits and guarantees, to be furnished by the United States to each foreign country and international organization in the next fiscal year; and

(B) for each country that is proposed to be furnished credits or guaranties under this Act in the next fiscal year and that has been approved for cash flow financing (as defined in subsection (d) of this section) in excess of $100,000,000 as of October 1 of the current fiscal year—

(i) the amount of such approved cash flow financing,

(ii) a description of administrative ceilings and controls applied, and

(iii) a description of the financial resources otherwise available to such country to pay such approved cash flow financing;

(6) an analysis and description of the services performed during the preceding fiscal year by officers and employees of the United States Government carrying out functions on a full-time basis under this Act for which reimbursement is provided under section 43(b) or section 21(a) of this Act, including the number of personnel involved in performing such services;

(7) the total amount of funds in the reserve under section 24(c) at the end of the fiscal year immediately preceding the fiscal year in which a report under this section is made, together with an assessment of the adequacy of such total amount of funds as a reserve for the payment of claims under guaranties issued pursuant to section 24 in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 634(a)(5) of the Foreign Assistance Act of 1961;

(8) a list of all countries with respect to which findings made by the President pursuant to section 3(a)(1) of this Act are in effect on the date of such transmission;

(9) the progress made under the program of the Republic of Korea to modernize its armed forces, the role of the United States in mutual security efforts in the Republic of Korea and the military balance between the People's Republic of Korea and the Republic of Korea;

(10) the amount and nature of Soviet military assistance to the armed forces of Cuba during the preceding fiscal year and the military capabilities of those armed forces;

(11) the status of each loan and each contract of guaranty or insurance theretofore made under the Foreign Assistance Act of 1961, predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability;

the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guaranty in connection with any such procurement, theretofore made under the Arms Export Control Act with respect to which there remains outstanding any unpaid obligation or potential liability;

(12)(A) a detailed accounting of all articles, services, credits, guarantees, or any other form of assistance furnished by the United States to each country and international organization, including payments to the United Nations, during the preceding fiscal year for the detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance for the detection and clearance of landmines; and

(B) for each provision of law making funds available or authorizing appropriations for demining activities described in subparagraph (A), an analysis and description of the objectives and activities undertaken during the preceding fiscal year, including the number of personnel involved in performing such activities; and

(13) such other information as the President may deem necessary.

(b) Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (e) for additional information with respect to any information submitted pursuant to subsection (a), the President shall submit such information to such committee.

(c) The President shall make every effort to submit all of the information required by subsection (a) or (b) wholly in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

(d)[1] The information required by subsection (a)(4) of this section shall be transmitted to the Congress no later than April 1 of each year.

(d)[1] For the purposes of subsection (a)(5)(B) of this section, the term "cash flow financing" means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this Act or under section 503(a)(3) of the Foreign Assistance Act of 1961 and the amount of the financing that has been approved therefor;

(e) As used in this section, the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

SEC. 26. [22 U.S.C. 2766] SECURITY ASSISTANCE SURVEYS.—(a) The Congress finds that surveys prepared by the United States for foreign countries have had a significant impact on subsequent military procurement decisions of those countries. It is the policy of the

[1] Two subsections (d) have been enacted. The second subsection (d) should end with a period.

United States that the results of security assistance surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this Act.

(b) As part of the quarterly report required by section 36(a) of this Act, the President shall include a list of all security assistance surveys authorized during the preceding calendar quarter, specifying the country with respect to which the survey was or will be conducted, the purpose of the survey, and the number of United States Government personnel who participated or will participate in the survey.

(c) Upon a request of the chairman of the Committee on Foreign Affairs of the House of Representatives or the chairman of the Committee on Foreign Relations of the Senate, the President shall submit to that committee copies of security assistance surveys conducted by United States Government personnel.

(d) As used in this section, the term "security assistance surveys" means any survey or study conducted in a foreign country by United States Government personnel for the purpose of assessing the needs of that country for security assistance, and includes defense requirement surveys, site surveys, general surveys or studies, and engineering assessment surveys.

SEC. 27. [22 U.S.C. 2767] AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—(a) The President may enter into a cooperative project agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization.

(b) As used in this section—

(1) the term "cooperative project" in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries forces and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in another member country of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another member country or for procurement by the United States of munitions from the North Atlantic Treaty Organization or a subsidiary of such organization;

(2) the term "cooperative project", in the case of an agreement entered into under subsection (j), means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongo-

ing multinational effort of the participants to improve the conventional defense capabilities of the participants and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in the country of another participant of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and

(3) the term "other participant" means a participant in a cooperative project other than the United States.

(c) Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) The President may enter into contracts or incur other obligations for a cooperative project on behalf of the other participants, without charge to any appropriation or contract authorization, if each of the other participants in the cooperative project agrees (1) to pay its equitable share of the contract or other obligation, and (2) to make such funds available in such amounts and at such times as may be required by the contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the contract or other obligation in advance of the time such payments, damages, or costs are due.

(e)(1) For those cooperative projects entered into on or after the effective date of the International Security and Development Cooperation Act of 1985, the President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 21(e) of this Act in connection with sales under sections 21 and 22 of this Act when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 21(e)(1)(A) and section 43(b) of this Act, administrative surcharges shall not be increased on other sales made under this Act in order to compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available

to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

(f) Not less than 30 days before a cooperative project agreement is signed on behalf of the United States, the President shall transmit to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate, a numbered certification with respect to such proposed agreement, setting forth—

(1) a detailed description of the cooperative project with respect to which the certification is made;

(2) an estimate of the quantity of the defense articles expected to be produced in furtherance of such cooperative project;

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section 21(e)(1)(A) and 43(b) of this Act, for its participation in such cooperative project and an estimate of that part of the full costs to be incurred by the other participants;

(4) an estimate of the dollar value of the funds to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(5) a description of the defense articles and defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(6) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project; and

(7) to the extent known, whether it is likely that prime contracts will be awarded to particular prime contractors or that subcontracts will be awarded to particular subcontractors to comply with the proposed agreement.

(g) In the case of a cooperative project with a North Atlantic Treaty Organization country, section 36(b) of this Act shall not apply to sales made under section 21 or 22 of this Act and to production and exports made pursuant to cooperative projects under this section, and section 36(c) of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

(h) The authority under this section is in addition to the authority under sections 21 and 22 of this Act and under any other provision of law.

(i)(1) With the approval of the Secretary of State and the Secretary of Defense, a cooperative agreement which was entered into by the United States before the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985 and which meets the requirements of this section as so amended may be treated on and after such date as having been made under this section as so amended.

(2) Notwithstanding the amendment made to this section made by the International Security and Development Cooperation Act of 1985, projects entered into under the authority of this section before the effective date of that amendment may be carried through to conclusion in accordance with the terms of this section as in effect immediately before the effective date of that amendment.

(j)(1) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

[SEC. 28. REPORTS ON PRICE AND AVAILABLILITY ESTIMATES.—Repealed—Section 1064(a) of Public Law 104–106; 110 Stat. 445]

Chapter 2A—Foreign Military Construction Sales

SEC. 29. [22 U.S.C. 2769] FOREIGN MILITARY CONSTRUCTION SALES.—The President may sell design and construction services to any eligible foreign country or international organization if such country or international organization agrees to pay in United States dollars not less than the full cost to the United States Government of furnishing such services. Payment shall be made to the United States Government in advance of the performance of such services by officers or employees of the United States Government. The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of design and construction services for sale under this section if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such time as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.

Chapter 2B.—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

SEC. 30. [22 U.S.C. 2770] GENERAL AUTHORITY.—(a) Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement

cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 38 of this Act. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however,* That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

(b) Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

(c) For the purpose of this section, the terms "defense articles" and "defense services" mean defense articles and defense services as defined in sections 47(3) and 47(4) of this Act.

Chapter 2C—Exchange of Training and Related Support

SEC. 30A. [22 U.S.C. 2770a] EXCHANGE OF TRAINING AND RELATED SUPPORT.—(a) Subject to subsection (b), the President may provide training and related support to military and civilian defense personnel of a friendly foreign country or an international organization. Such training and related support shall be provided by a Secretary of a military department and may include the provision of transportation, food services, health services, and logistics and the use of facilities and equipment.

(b) Training and related support may be provided under this section only pursuant to an agreement or other arrangements providing for the provision by the recipient foreign country or international organization, on a reciprocal basis, of comparable training and related support to military and civilian personnel under the jurisdiction of the Secretary of the military department providing the training and related support under this section. Such reciprocal training and related support must be provided within a reasonable period of time (which may not be more than one year) of the provision of training and related support by the United States. To the

extent that a foreign country or international organization to which training and related support is provided under this section does not provide such comparable training and related support to the United States within a reasonable period of time, that country or international organization shall be required to reimburse the United States for the full costs of the training and related support provided by the United States.

(c) Training and related support under this section shall be provided under regulations prescribed by the President.

(d) Not later than February 1 of each year, the President shall submit to the Congress a report on the activities conducted pursuant to this section during the preceding fiscal year, including the estimated full costs of the training and related support provided by the United States to each country and international organization and the estimated value of the training and related support provided to the United States by that country or international organization.

Chapter 3.—MILITARY EXPORT CONTROLS

SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS.—(a) There are authorized to be appropriated to the President to carry out this Act $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for the fiscal 1987. Credits may not be extended under section 23 of this Act in an amount, and loans may not be guaranteed under section 24(a) of this Act in a principal amount, which exceeds any maximum amount which may be established with respect to such credits or such loan guarantees in legislation appropriating funds to carry out this Act. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

(b)(1) The total amount of credits extended under section 23 of this Act shall not exceed $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for fiscal year 1987.

(2) Of the aggregate amount of financing provided under this section, not more than $553,900,000 for fiscal year 1986 and not more than $553,900,000 for fiscal year 1987 may be made available at concessional rates of interest. If a country is released from its contractual liability to repay the United States Government with respect to financing provided under this section, such financing shall not be considered to be financing provided at concessional rates of interest for purposes of the limitation established by this paragraph.

(c) Loans available under section 23 shall be provided at rates of interest that are not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities.

SEC. 32. [22 U.S.C. 2772] PROHIBITION AGAINST CERTAIN MILITARY EXPORT FINANCING BY EXPORT-IMPORT BANK.—[Repealed—Section 102(e) of Public Law 102–429; 106 Stat. 2195]

SEC. 33. [22 U.S.C. 2773] RESTRAINT IN ARMS SALES TO SUB-SAHARAN AFRICA.—It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic devel-

opment and that United States policy should assist in limiting the development of costly military conflict in that region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.

SEC. 34. [22 U.S.C. 2774] FOREIGN MILITARY SALES CREDIT STANDARDS.—The President shall establish standards and criteria for credit and guaranty transactions under sections 23 and 24 in accordance with the foreign, national security, and financial policies of the United States.

SEC. 35. [22 U.S.C. 2775] FOREIGN MILITARY SALES TO LESS DEVELOPED COUNTRIES.—(a) When the President finds that any economically less developed country is diverting development assistance furnished pursuant to the Foreign Assistance Act of 1961, as amended, or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with its development, such country shall be immediately ineligible for further sales and guarantees under sections 21, 22, 23, and 24, until the President is assured that such diversion will no longer take place.

(b) [Repealed—1974]

SEC. 36. [22 U.S.C. 2776] REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum) containing—

(1) a listing of all letters of offer to sell any major defense equipment for $1,000,000 or more under this Act to each foreign country and international organization, by category, if such letters of offer have not been accepted or canceled;

(2) a listing of all such letters of offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year;

(3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under section 23 and guaranty agreements under section 24 made during the fiscal year in which such report is submitted;

(4) a numbered listing of all licenses and approvals for the export to each foreign country and international organization during such fiscal year of commercially sold major defense equipment, by category, sold for $1,000,000 or more, together

with the total value of all defense articles and defense services so licensed for each foreign country and international organization, setting forth, with respect to the listed major defense equipment—

(A) the items to be exported under the license,

(B) the quantity and contract price of each such item to be furnished, and

(C) the name and address of the ultimate user of each such item;

(5) projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 21 and 22, in the quarter of the fiscal year immediately following the quarter for which such report is submitted;

(6) a projection with respect to all sales expected to be made to each country and organization for the remainder of the fiscal year in which such report is transmitted;

(7) an estimate of—

(A) the number of United States military personnel, the number of United States Government civilian personnel, and the United States civilian contract personnel, who were in each foreign country at the end of that quarter, and

(B) the number of members of each such category of personnel who were in each foreign country at any time during that quarter,

in implementation of sales and commercial exports under this Act or of assistance under chapter 2, 5, 6, or 8 of part II of the Foreign Assistance Act of 1961, including both personnel assigned to the country and personnel temporarily in the country by detail or otherwise;

(8) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 39, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report;

(9) a listing of each sale under section 29 during the quarter for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale;

(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance

Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more;

(11) a listing of all munitions items (as defined in section 40(l)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

(A) the value of the munitions items was $250,000 of more; and

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities);

(12) a report on all concluded government-to-government agreements regarding foreign coproduction of defense articles of United States origin and all other concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin (including coproduction memoranda of understanding or agreement) that have not been previously reported under this subsection, which shall include—

(A) the identity of the foreign countries, international organizations, or foreign firms involved;

(B) a description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(C) a description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(D) if any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls incorporated in the coproduction or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers; and

(13) a report on all exports of significant military equipment for which information has been provided pursuant to section 38(i).

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be: (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed

Forces or other agency of the United States which is making the offer to sell or the sale, as the case may be.

(b)(1) In the case of any letter of offer to sell any defense articles or services under this Act for $50,000,000 or more, any design and construction services for $200,000,000 or more, or any major defense equipment for $14,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a), and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification). In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

(A) a detailed description of the defense articles, defense services, or design and construction services to be offered, including a brief description of the capabilities of any defense article to be offered;

(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

(C) the name of each contractor expected to provide the defense article, defense service, or design and construction services proposed to be sold and a description of any offset agreement with respect to such sale;

(D) an evaluation, prepared by the Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence, of the manner, if any, in which the proposed sale would—

(i) contribute to an arms race;

(ii) support international terrorism;

(iii) increase the possibility of an outbreak or escalation of conflict;

(iv) prejudice the negotiation of any arms controls; or

(v) adversely affect the arms control policy of the United States;

(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles, defense services, or design and construction services which are the subject of such sale and a description of how such country or organization intends to use such defense articles, defense services, or design and construction services;

(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(G) the reasons why the proposed sale is in the national interest of the United States;

(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles, defense services, or design and construction services;

(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles, defense services, or design and construction services proposed to be sold;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles, defense services, or design and construction services are available from other countries;

(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered;

(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, defense services, design and construction services or defense equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and

unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement;

(N) the projected delivery dates of the defense articles, defense services, or design and construction services to be offered;

(O) a detailed description of weapons and levels of munitions that may be required as support for the proposed sale; and

(P) an analysis of the relationship of the proposed sale to projected procurements of the same item.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

(2) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, it shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

(3) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall cite any quarterly report sub-

mitted pursuant to section 28 [1] of this Act which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

(5)(A) If, before the delivery of any major defense article or major defense equipment, or the furnishing of any defense service or design and construction service, sold pursuant to a letter of offer described in paragraph (1), the sensitivity of technology or the capability of the article, equipment, or service is enhanced or upgraded from the level of sensitivity or capability described in the numbered certification with respect to an offer to sell such article, equipment, or service, then, at least 45 days before the delivery of such article or equipment or the furnishing of such service, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report—

(i) describing the manner in which the technology or capability has been enhanced or upgraded and describing the significance of such enhancement or upgrade; and

(ii) setting forth a detailed justification for such enhancement or upgrade.

(B) The provisions of subparagraph (A) apply to an article or equipment delivered, or a service furnished, within ten years after the transmittal to the Congress of a numbered certification with respect to the sale of such article, equipment, or service.

(C) If the enhancement or upgrade in the sensitivity of technology or the capability of major defense equipment, defense articles, defense services, or design and construction services described in a numbered certification submitted under this subsection costs $14,000,000 or more in the case of any major defense equipment, $50,000,000 or more in the case of defense articles or defense services, or $200,000,000 or more in the case of design or construction services, then the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a new numbered certification which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this subsection to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

(D) For the purposes of subparagraph (A), the term "major defense article" shall be construed to include electronic devices, which if upgraded, would enhance the mission capability of a weapons system.

(c)(1) In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under

[1] Section 28 was repealed by section 1064(a) of Public Law 104–106 (110 Stat. 445).

a contract in the amount of $14,000,000 or more or of defense articles or defense services sold under a contract in the amount of $50,000,000 or more, before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export and a description of any such offset agreement. In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense.[1] In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.

(2) Unless the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A) in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export;

(B) in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of,

[1] Section 732(b)(2) of P.L. 103–236 amended section 36(c)(1) in the third sentence by inserting "and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement)" after "Secretary of Defense". The amendment probably should have been made to the second sentence.

the Russian Federation, Ukraine, or Kazakhstan, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(C) in the case of any other license, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

(3)(A) Any joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) The provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract".

(d)(1) In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c)(1) containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.

(2) A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(B) at least 30 days before approval is given in the case of an agreement for or in any other country;

unless the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States.

(3) If the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, thus waiving the requirements of paragraph (4), he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the

immediate approval of the agreement and a discussion of the national security interests involved.

(4) Approval for an agreement subject to paragraph (1) may not be given under section 38 if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.

(5)(A) Any joint resolution under paragraph (4) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under paragraph (4), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(e) For purposes of this section—

(1) the term "offset agreement" means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense service from the supplier; and

(2) the term "United States person" means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, district, territory, or possession thereof; or

(ii) owned or controlled in fact by individuals described in subparagraph (A).

(f) The President shall cause to be published in a timely manner in the Federal Register, upon transmittal to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, the full unclassified text of—

(1) each numbered certification submitted pursuant to subsection (b);

(2) each notification of a proposed commercial sale submitted under subsection (c); and

(3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d).

(g) Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)).

SEC. 37. [22 U.S.C. 2777] FISCAL PROVISIONS RELATING TO FOREIGN MILITARY SALES CREDITS.—(a) Cash payments received under sections 21, 22, and 29 and advances received under section

23 shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties.

(b) Amounts received from foreign governments and international organizations as repayments for credits extended pursuant to section 23, amounts received from the disposition of instruments evidencing indebtedness under section 24(b) (excluding such portion of the sales proceeds as may be required at the time of disposition to be obligated as a reserve for payment of claims under guaranties issued pursuant to section 24(b), which sums are made available for such obligations), and other collections (including fees and interest) shall be transferred to the miscellaneous receipts of the Treasury.

(c) Notwithstanding the provisions of subsection (b), to the extent that any of the funds constituting the reserve under section 24(c) are paid out for a claim arising out of a loan guaranteed under section 24, amounts received from a foreign government or international organization after the date of such payment, with respect to such claim, shall be credited to such reserve, shall be merged with the funds in such reserve, and shall be available for any purpose for which funds in such reserve are available.

SEC. 38. [22 U.S.C. 2778] CONTROL OF ARMS EXPORTS AND IMPORTS.—(a)(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this Act as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b)(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regula-

tions. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State for local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this Act, except that no license shall be required for such activities undertaken by or for an agency of the United States Government—

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(IV) For purposes of this clause, the term "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

(B)[1] A copy of each registration made under this paragraph shall be transmitted to the Secretary of the Treasury for review regarding law enforcement concerns. The Secretary shall report to the President regarding such concerns as necessary.

(B)[1] The prohibition under such regulations required by the second sentence of subparagraph (A) shall not extend to any military firearms (or ammunition, components, parts, accessories, and attachments for such firearms) of United States manufacture furnished to any foreign government by the United States under this

[1] So in original. There are two subparagraphs "(B)".

Act or any other foreign assistance or sales program of the United States if—

(i) such firearms are among those firearms that the Secretary of the Treasury is, or was at any time, required to authorize the importation of by reason of the provisions of section 925(e) of title 18, United States Code (including the requirement for the listing of such firearms as curios or relics under section 921(a)(13) of that title); and

(ii) such foreign government certifies to the United States Government that such firearms are owned by such foreign government.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1), no defense articles or defense services designated by the President under subsection (a)(1) may be exported or imported without a license for such export or import, issued in accordance with this Act and regulations issued under this Act, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3)(A) For each of the fiscal years 1988 and 1989, $250,000 of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

(i) contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses; and

(ii) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.

(B) The authority of this paragraph may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Any person who willfully violates any provision of this section or section 39, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000, or imprisoned not more than ten years, or both.

(d) [Repealed—1979]

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act, subject to the same terms and conditions as

are applicable to such powers under such Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(f)(1) The President shall periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section. The results of such reviews shall be reported to the Speaker of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such a report shall be submitted at least 30 days before any item is removed from the Munitions List and shall describe the nature of any controls to be imposed on that item under the Export Administration Act of 1979.

(2) The President may not authorize an exemption for a foreign country from the licensing requirements of this Act for the export of defense items under subsection (j) or any other provision of this Act until 30 days after the date on which the President has transmitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a notification that includes—

(A) a description of the scope of the exemption, including a detailed summary of the defense articles, defense services, and related technical data covered by the exemption; and

(B) a determination by the Attorney General that the bilateral agreement concluded under subsection (j) requires the compilation and maintenance of sufficient documentation relating to the export of United States defense articles, defense services, and related technical data to facilitate law enforcement efforts to detect, prevent, and prosecute criminal violations of any provision of this Act, including the efforts on the part of countries and factions engaged in international terrorism to illicitly acquire sophisticated United States defense items.

(3) Paragraph (2) shall not apply with respect to an exemption for Canada from the licensing requirements of this Act for the export of defense items.

(g)(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),

(iii) section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2339A of such title (relating to providing material support to terrorists),

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(v) section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705),

(vi) section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd2),

(vii) chapter 105 of title 18, United States Code (relating to sabotage),

(viii) section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(x) section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421), or

(xi) section 603 (b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113 (b) and (c));

(B) persons who are the subject of an indictment or have been convicted under section 371 of title 18, United States Code, for conspiracy to violate any of the statutes cited in subparagraph (A); and

(C) persons who are ineligible—

(i) to contract with,

(ii) to receive a license or other form of authorization to export from, or

(iii) to receive a license or other form of authorization to import defense articles or defense services from,

any agency of the United States Government.

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines—

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or de-

fense services from, any agency of the United States Government,

the President may disapprove the application. The President shall consider requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person—

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection—

(A) the term "foreign corporation" means a corporation that is not incorporated in the United States;

(B) the term "foreign government" includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term "foreign person" means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;

(D) the term "party to the export" means—

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

(h) The designation by the President (or by an official to whom the President's functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(i) As prescribed in regulations issued under this section, a United States person to whom a license has been granted to export an item on the United States Munitions List shall, not later than 15 days after the item is exported, submit to the Department of State a report containing all shipment information, including a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item.

(j) REQUIREMENTS RELATING TO COUNTRY EXEMPTIONS FOR LICENSING OF DEFENSE ITEMS FOR EXPORT TO FOREIGN COUNTRIES.—

(1) REQUIREMENT FOR BILATERAL AGREEMENT.—

(A) IN GENERAL.—The President may utilize the regulatory or other authority pursuant to this Act to exempt a foreign country from the licensing requirements of this Act with respect to exports of defense items only if the United States Government has concluded a binding bilateral agreement with the foreign country. Such agreement shall—

(i) meet the requirements set forth in paragraph (2); and

(ii) be implemented by the United States and the foreign country in a manner that is legally-binding under their domestic laws.

(B) EXCEPTION.—The requirement to conclude a bilateral agreement in accordance with subparagraph (A) shall not apply with respect to an exemption for Canada from the licensing requirements of this Act for the export of defense items.

(2) REQUIREMENTS OF BILATERAL AGREEMENT.—A bilateral agreement referred to paragraph (1)—

(A) shall, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy requiring—

(i) conditions on the handling of all United States-origin defense items exported to the foreign country, including prior written United States Government approval for any reexports to third countries;

(ii) end-use and retransfer control commitments, including securing binding end-use and retransfer con-

trol commitments from all end-users, including such documentation as is needed in order to ensure compliance and enforcement, with respect to such United States-origin defense items;

(iii) establishment of a procedure comparable to a "watchlist" (if such a watchlist does not exist) and full cooperation with United States Government law enforcement agencies to allow for sharing of export and import documentation and background information on foreign businesses and individuals employed by or otherwise connected to those businesses; and

(iv) establishment of a list of controlled defense items to ensure coverage of those items to be exported under the exemption; and

(B) should, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy regarding—

(i) controls on the export of tangible or intangible technology, including via fax, phone, and electronic media;

(ii) appropriate controls on unclassified information relating to defense items exported to foreign nationals;

(iii) controls on international arms trafficking and brokering;

(iv) cooperation with United States Government agencies, including intelligence agencies, to combat efforts by third countries to acquire defense items, the export of which to such countries would not be authorized pursuant to the export control regimes of the foreign country and the United States; and

(v) violations of export control laws, and penalties for such violations.

(3) ADVANCE CERTIFICATION.—Not less than 30 days before authorizing an exemption for a foreign country from the licensing requirements of this Act for the export of defense items, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a certification that—

(A) the United States has entered into a bilateral agreement with that foreign country satisfying all requirements set forth in paragraph (2);

(B) the foreign country has promulgated or enacted all necessary modifications to its laws and regulations to comply with its obligations under the bilateral agreement with the United States; and

(C) the appropriate congressional committees will continue to receive notifications pursuant to the authorities, procedures, and practices of section 36 of this Act for defense exports to a foreign country to which that section would apply and without regard to any form of defense ex-

port licensing exemption otherwise available for that country.

(4) DEFINITIONS.—In this section:

(A) DEFENSE ITEMS.—The term "defense items" means defense articles, defense services, and related technical data.

(B) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(i) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(ii) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

SEC. 39. [22 U.S.C. 2779] FEES OF MILITARY SALES AGENTS AND OTHER PAYMENTS.—(a) In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

(1) sales of defense articles or defense services under section 22, or of design and construction services under section 29 of this Act; or

(2) commercial sales of defense articles or defense services licensed or approved under section 38 of this Act;

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments. The Secretary of State shall by regulation require such recordkeeping as he determines is necessary.

(b) The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this Act.

(c) No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 22 or section 29 of this Act, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, "improper influence" means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

(d)(1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by

law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

SEC. 39A. [22 U.S.C. 2779A] PROHIBITION ON INCENTIVE PAYMENTS.

(a) No United States supplier of defense articles or services sold or licensed under this Act, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 and section 12(a) of such Act, subject to the same terms and conditions as are applicable to such powers under that Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) For purposes of this section—

(1) the term "offset agreement" means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term "incentive payments" means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term "United States person" means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

(ii) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (i).

SEC. 40. [22 U.S.C. 2780] TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of States makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent, which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by

means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

(1) IN GENERAL.—A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item with be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United State person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue), takes an action described in paragraph (1) outside the United States.

(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES.—Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or out-

side the United States by a United States person described in subsection (l)(3)(A) or (B). To the extent provided in regulations issued under subsection (l)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United State by a person designated as a United States person in those regulations.

(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d) COUNTRIES COVERED BY PROHIBITION.—The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.

(e) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

(f) RESCISSION.—(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2) (A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows:

"That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited.", the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) WAIVER.—The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National

Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) RELATION TO OTHER LAWS.—

(1) IN GENERAL.—With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provisions of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) SECTION 614(A) WAIVER AUTHORITY.—If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) CRIMINAL PENALTY.—Any person who willfully violates this section shall be fined for each violation not more than $1,000,000, imprisoned not more than 10 years, or both.

(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (subject to the same terms and conditions as are applicable to such powers under that Act), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

(l) DEFINITIONS.—As used in this section—

(1) the term "munitions item" means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term "United States", when used geographically, means the several States, 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;

(3) the term "United States person"means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of state, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States;

with respect to that person's actions while outside the United States;

(4) the term "nuclear explosive device" has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

(5) the term "unsafeguarded special nuclear material" has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

SEC. 40A. [22 U.S.C. 2781] TRANSACTIONS WITH COUNTRIES NOT FULLY COOPERATING WITH UNITED STATES ANTITERRORISM EFFORTS.—

(a) PROHIBITED TRANSACTIONS.—No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) WAIVER.—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

CHAPTER 3A—END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 40A.[1] [22 U.S.C. 2785] END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES.

(a) ESTABLISHMENT OF MONITORING PROGRAM.—

(1) IN GENERAL.—In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) REQUIREMENTS OF PROGRAM.—To the extent practicable, such program—

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular end-use verification developed under section 38(g)(7) of this Act (commonly referred to as the "Blue Lantern" program); and

[1] Section 150(a) of Public Law 104–164 (110 Stat. 1436) added this section. Probably should be redesignated as section 40B.

(B) shall be designed to provide reasonable assurance that—

(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) CONDUCT OF PROGRAM.—In carrying out the program established under subsection (a), the President shall ensure that the program—

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.

(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this section, and annually thereafter as a part of the annual congressional presentation documents submitted under section 634 of the Foreign Assistance Act of 1961, the President shall transmit to the Congress a report describing the actions taken to implement this section, including a detailed accounting of the costs and number of personnel associated with the monitoring program.

(d) THIRD COUNTRY TRANSFERS.—For purposes of this section, defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) includes defense articles and defense services that are transferred to a third country or other third party.

Chapter 4.—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

SEC. 41. EFFECTIVE DATE.—This Act shall take effect on July 1, 1968.

SEC. 42. [22 U.S.C. 2791] GENERAL PROVISIONS.—(a) In carrying out this Act, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this Act, there shall be taken into consideration (A)[1] the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (B)[1] the portion of

[1] Subparagraphs (A) through (C) of section 42(a) probably should be paragraphs (1) through (3), respectively. See section 1225(a)(3)(C) of P.L. 105–277 (112 Stat. 2681–773).

the defense articles so manufactured which is of United States origin, and (C)[1] whether, and the extent to which, such sale might contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(b) No credit sale shall be extended under section 23, and no guarantee shall be issued under section 24, in any case involving coproduction or licensed, production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c) Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d)(1) With respect to sales and guaranties under sections 21, 22, 23, 24, 29, and 30 the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e) (1) Each contract for sale entered into under sections 21, 22, 29, and 30 of this Act, and each contract entered into under section 27(d) of this Act, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this Act.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 21, 22, 29, and 30 of this Act, or under contracts entered into under sec. 27(d) of this Act, that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f) The President shall, to the maximum extent possible and consistent with the purposes of this Act, use civilian contract personnel in any foreign country to perform defense services sold under this Act.

SEC. 43. [22 U.S.C. 2792] ADMINISTRATIVE EXPENSES.—(a) Funds made available under other law for the operations of United States Government agencies carrying out functions under this Act shall be available for the administrative expenses incurred by such agencies under this Act.

(b) Charges for administrative services calculated under section 21(e)(1)(A) of this Act shall include recovery of administrative expenses and official reception and representation expenses incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this Act when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 21(a) of this Act; and

(3) such expenses are neither salaries of the Armed Forces of the United States nor represent unfunded estimated costs of civilian retirement and other benefits.

(c) Not more than $72,500 of the funds derived from charges for administrative services pursuant to section 21(e)(1)(A) of this Act may be used each fiscal year for official reception and representation expenses.

SEC. 44. [22 U.S.C. 2793] STATUTORY CONSTRUCTION.—No provision of this Act shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended, or section 7307 of title 10 of the United States Code.

SEC. 45. STATUTES REPEALED AND AMENDED.—(a) Sections 521, 522, 523, 524(b)(3), 525, 634(g), and 640 of the Foreign Assistance Act of 1961, as amended, are hereby repealed.

(b) Part III of the Foreign Assistance Act of 1961, as amended, is amended as follows:

(1) Section 622(b) is amended by striking out "or sales".

(2) Section 622(c) is amended by striking out "and sales" and "or sales".

(3) Section 632(d) is amended by striking out "sections 506, 522, and 523," in the first sentence and inserting in lieu thereof "section 506".

(4) Section 634(d) is amended by inserting "or any other" between "under this" and "Act" in the fourth sentence.

(5) Section 644(m) is amended by striking out "and sales" in the first sentence of the paragraph following numbered paragraph (3).

(c) References in law to the provisions of law repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act. Except for the laws specified in section 44, no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.

SEC. 46. [2341] SAVINGS PROVISIONS.—Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of any provisions of law repealed by section 45(a) shall continue in full force and effect until modified by appropriate authority.

SEC. 47. [22 U.S.C. 2794] DEFINITIONS.—For purposes of this Act, the term—

(1) "excess defense article" has the meaning provided by section 644(g) of the Foreign Assistance Act of 1961;

(2) "value" means, in the case of an excess defense article, except as otherwise provided in sec. 21(a),,[1] not less than the greater of—

(A) the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such article, plus the scrap value; or

(B) the market value, if ascertainable;

(3) "defense article", except as provided in paragraph (7) of this section, includes—

(A) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war,

(B) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,

(C) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954) source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity), byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

[1] The second comma after "sec. 21(a)," in section 47(2) appears in the law.

(4) "defense service", except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 644(e) of the Foreign Assistance Act of 1961) used for the purposes of making military sales, but does not include design and construction services under section 29 of this Act;

(5) "training" includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces;

(6) "major defense equipment" means any item of significant military equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000;

(7) "defense articles and defense services" means, with respect to commercial exports subject to the provisions of section 38 of this Act, those items designated by the President pursuant to subsection (a)(1) of such section;

(8) "design and construction services" means, with respect to sales under section 29 of this Act, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency; and

(9) "significant military equipment" means articles—

(A) for which special export controls are warranted because of the capacity of such articles for substantial military utility or capability; and

(B) identified on the United States Munitions List.

CHAPTER 5—SPECIAL DEFENSE ACQUISITION FUND

SEC. 51. [22 U.S.C. 2795] SPECIAL DEFENSE ACQUISITION FUND.—(a)(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this chapter referred to as the "Fund"), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this Act, the Foreign Assistance Act of 1961, or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this chapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

(2) Nothing in this chapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this Act or the Foreign Assistance Act of 1961.

(3) The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this Act, the Foreign Assistance Act of 1986, or other law.

(4) The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b) The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 21(a)(1)(A) of this Act representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961) of defense articles and defense services acquired under this chapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 21(a)(1) or section 22 of this Act or section 644(m) of the Foreign Assistance Act of 1961, as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c)(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10, United States Code. For purposes of this limitation, the size of the Fund is the amounts in the Fund plus the value (in terms of acquisition cost) of the defense articles acquired under this chapter which have not been transferred from the Fund in accordance with this chapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 52. [22 U.S.C. 2795a] USE AND TRANSFER OF ITEMS PROCURED BY THE FUND.—(a) No defense article or defense service acquired by the Secretary of Defense under this chapter may be transferred to any foreign country or international organization unless such transfer is authorized by this Act, the Foreign Assistance Act of 1961, or other law.

(b) The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this chapter prior to their transfer to a foreign country or international organization, if such is necessary to meet

national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this chapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 43(b) of this Act.

SEC. 53. ANNUAL REPORTS TO CONGRESS.—[Repealed—Section 145(a) of Public Law 104–164; 110 Stat. 1434]

CHAPTER 6—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

SEC. 61. [22 U.S.C. 2796] LEASING AUTHORITY.—(a) The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

(1) he determines that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than on a sales basis under this Act;

(2) he determines that the articles are not for the time needed for public use;

(3) the President first considers the effects of the lease of the articles on the national technology and industrial base, particularly the extent, if any, to which the lease reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the articles are leased; and

(4) the country or international organization has agreed to pay in United States dollars all costs incurred by the United States Government in leasing such articles, including reimbursement for depreciation of such articles while leased, the costs of restoration or replacement if the articles are damaged while leased, and, if the articles are lost or destroyed while leased—

(A) in the event the United States intends to replace the articles lost or destroyed, the replacement cost (less any depreciation in the value) of the articles; or

(B) in the event the United States does not intend to replace the articles lost or destroyed, an amount not less than the actual value (less any depreciation in the value) specified in the lease agreement.

The requirement of paragraph (4) shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communication or electronics interface projects. The President may waive the requirement of paragraph (4) for reimbursement of depreciation for any defense article which has passed three-quarters of its normal service life if the President determines that to do so is important to the national security interest of the

United States. The President may waive the requirement of paragraph (4) with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense, except that this waiver authority—

(A) may be exercised only if the President submits to the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relation and the Committee on Appropriations of the Senate, in accordance with the regular notification procedures of those Committees, a detailed notification for each lease with respect to which the authority is exercised; and

(B) may be exercised only during the fiscal year the current fiscal year [1] and only with respect to one country, unless the Congress hereafter provides otherwise.

The preceding sentence does not constitute authorization of appropriations for payments by the United States for leased articles.

(b) Each lease agreement under this section shall be for a fixed duration of not to exceed five years and shall provide that, at any time during the duration of the lease, the President may terminate the lease and require the immediate return of the leased articles.

(c) Defense articles in the stocks of the Department of Defense may be leased or loaned to a foreign country or international organization only under the authority of this chapter or chapter 2 of part II of the Foreign Assistance Act of 1961, and may not be leased to a foreign country or international organization under the authority of section 2667 of title 10, United States Code.

SEC. 62. [22 U.S.C. 2796a] REPORTS TO THE CONGRESS.—(a) Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this chapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961, for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—

(1) the country or international organization to which the defense article is to be leased or loaned;

(2) the type, quantity, and value (in terms of replacement cost) of the defense article to be leased or loaned;

(3) the terms and duration of the lease or loan; and

(4) a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold under this Act.

(b) The President may waive the requirements of this section (and in the case of an agreement described in section 63, may waive the provisions of that section) if he states in his certification, that an emergency exists which requires that the lease or loan be

[1] Section 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in section 101(d) of division A of Public Law 105–277), amended subsection (a) in the second subparagraph (B) by striking out "1998" and inserting in lieu thereof "the current fiscal year". The amendment probably should have struck out "fiscal year 1998".

entered into immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.

(c) The certification required by subsection (a) shall be transmitted—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand; and

(2) not less than 30 calendar days before the agreement is entered into or renewed in the case of an agreement with any other organization or country.

SEC. 63. [22 U.S.C. 2796b] LEGISLATIVE REVIEW.—(a) In the case of any agreement involving the lease under this chapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961, to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at $14,000,000 or more, or (ii) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $50,000,000 or more, the agreement may not be entered into or renewed if the Congress, within the 15-day or 30-day period specified in section 62(c) (1) or (2), as the case may be, enacts a joint resolution prohibiting the proposed lease or loan.

(b) Any joint resolution under subsection (a) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(c) For the purpose of expediting the consideration and enactment of joint resolutions under subsection (a), a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

SEC. 64. [22 U.S.C. 2796c] APPLICATION OF OTHER PROVISIONS OF LAW.—Any reference to sales of defense articles under this Act in any provision of law restricting the countries or organizations to which such sales may be made shall be deemed to include a reference to leases of defense articles under this chapter.

SEC. 65. [22 U.S.C. 2796d] LOAN OF MATERIALS, SUPPLIES, AND EQUIPMENT FOR RESEARCH AND DEVELOPMENT PURPOSES.—(a)(1) Except as provided in subsection (c), the Secretary of Defense may loan to a country that is a NATO or major non-NATO ally materials, supplies, or equipment for the purpose of carrying out a program of cooperative research, development, testing, or evaluation. The Secretary may accept as a loan or a gift from a country that is a NATO or major non-NATO ally materials, supplies, or equipment for such purpose.

(2) Each loan or gift transaction entered into by the Secretary under this section shall be provided for under the terms of a written agreement between the Secretary and the country concerned.

(3) A program of testing or evaluation for which the Secretary may loan materials, supplies, or equipment under this section includes a program of testing or evaluation conducted solely for the purpose of standardization, interchangeability, or technical evaluation if the country to which the materials, supplies, or equipment are loaned agrees to provide the results of the testing or evaluation to the United States without charge.

(b) The materials, supplies, or equipment loaned to a country under this section may be expended or otherwise consumed in connection with any testing or evaluation program without a requirement for reimbursement of the United States if the Secretary—

(1) determines that the success of the research, development, test, or evaluation depends upon expending or otherwise consuming the materials, supplies, or equipment loaned to the country; and

(2) approves of the expenditure or consumption of such materials, supplies, or equipment.

(c) The Secretary of Defense may not loan to a country under this section any material if the material is a strategic and critical material and if, at the time the loan is to be made, the quantity of the material in the National Defense Stockpile (provided for under section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b)) is less than the quantity of such material to be stockpiled, as determined by the President under section 3(a) of such Act.

(d) For purposes of this section, the term "NATO ally" means a member country of the North Atlantic Treaty Organization (other than the United States).

CHAPTER 7—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

SEC. 71. [22 U.S.C. 2797] LICENSING

(a) ESTABLISHMENT OF LIST OF CONTROLLED ITEMS.—The Secretary of State, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section 6(l) of the Export Administration Act of 1979.

(b) REFERRAL OF LICENSE APPLICATIONS.—(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) may be made only after the license application is referred to the Secretary of Defense.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a), the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce, the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(c) INFORMATION SHARING.—The Secretary of State shall establish a procedure for sharing information with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(d) EXPORTS TO SPACE LAUNCH VEHICLE PROGRAMS.—Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than $50,000,000 that are controlled under this Act pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex, the Secretary shall transmit to the Congress a report describing the licensed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. The requirement contained in the preceding sentence shall not apply to licenses for exports to countries that were members of the MTCR as of April 17, 1987.

SEC. 72. [22 U.S.C. 2797a] DENIAL OF THE TRANSFER OF MISSILE EQUIPMENT OR TECHNOLOGY BY UNITED STATES PERSONS

(a) SANCTIONS.—(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 of this Act, section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405), or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this Act.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) DISCRETIONARY SANCTIONS.—In the case of any determination made pursuant to subsection (a), the President may pursue any penalty provided in section 38(c) of this Act.

(c) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(d) WAIVER.—The President may waive the imposition of sanctions under subsection (a) with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

SEC. 73. [22 U.S.C. 2797b] TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS

(a) SANCTIONS.—(1) Subject to subsections (c) through (g), if the President determines that a foreign person, after the date of the enactment of this chapter, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 11B(b)(1) of the Export Administration Act of 1979, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this Act.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development,

or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(2) LIMITATION.—Notwithstanding paragraph (1), subsection (a) shall apply to an entity subordinate to a government that engages in exports or transfers described in section 498A(b)(3)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(b)(3)(A)).

(c) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in subsection (a) may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts, and if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) for any judicial or other enforcement action taken by the MTCR adherent, such action has—

(A) been comprehensive; and

(B) been performed to the satisfaction of the United States; and

(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding.

(d) ADVISORY OPINIONS.—The Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) WAIVER AND REPORT TO CONGRESS.—(1) In any case other than one in which an advisory opinion has been issued under subsection (d) stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives not less than 45 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(g) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(h) EXCEPTIONS.—The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(3) to—

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production,

(C) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(D) information and technology essential to United States products or production.

SEC. 73A. [22 U.S.C. 2797b–1] NOTIFICATION OF ADMITTANCE OF MTCR ADHERENTS.

(a) POLICY REPORTS.—Following any action by the United States that results in a country becoming a MTCR adherent, the President shall transmit promptly to the Congress a report which describes the rationale for such action, together with an assessment of that country's nonproliferation policies, practices, and commitments. Such report shall also include the text of any agreements or understandings between the United States and such country regarding the terms and conditions of the country's adherence to the MTCR.

(b) INTELLIGENCE ASSESSMENT REPORT.—At such times that a report is transmitted pursuant to subsection (a), the Director of Central Intelligence shall promptly prepare and submit to the Congress a separate report containing any credible information indicating that the country described in subsection (a) has engaged in any activity identified under subparagraph (A), (B), or (C) of section 73(a)(1) within the previous two years.

SEC. 73B. [22 U.S.C. 2797b–2] AUTHORITY RELATING TO MTCR ADHERENTS.

Notwithstanding section 73(b), the President may take the actions under section 73(a)(2) under the circumstances described in section 74(b)(2).

SEC. 74. [22 U.S.C. 2797c] DEFINITIONS

(a) IN GENERAL.—For purposes of this chapter—

(1) the term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms "missile equipment or technology" and "MTCR equipment or technology" mean those items listed in category I or category II of the MTCR Annex;

(6) the term "United States person" has the meaning given that term in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2));

(7) the term "foreign person" means any person other than a United States person;

(8)(A) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries with non-market economies (excluding former members of the Warsaw Pact), the term "person" means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of electronics, space systems or equipment, and military aircraft; and

(9) the term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(b) INTERNATIONAL UNDERSTANDING DEFINED.—For purposes of subsection (a)(3), as it relates to any international understanding concluded with the United States after January 1, 2000, the term "international understanding" means—

(1) any specific agreement by a country not to export, transfer, or otherwise engage in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act; or

(2) any specific understanding by a country that, notwithstanding section 73(b) of this Act, the United States retains the right to take the actions under section 73(a)(2) of this Act in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act.

CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

SEC. 81. [22 U.S.C. 2798] SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the

activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are

essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12–month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

CHAPTER 9—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS

SEC. 91. [22 U.S.C. 2799] PURPOSE.

The purpose of this chapter is to authorize the President to support, consistent with the CFE Treaty, a NATO equipment transfer program that will—

(1) enhance NATO's forces,

(2) increase NATO standardization and interoperability, and

(3) better distribute defense burdens within the NATO alliance.

SEC. 92. [22 U.S.C. 2799a] CFE TREATY OBLIGATIONS.

The authorities provided in this chapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.

SEC. 93. [22 U.S.C. 2799b] AUTHORITIES.

(a) GENERAL AUTHORITY.—The President may transfer to any NATO/CFE country, in accordance with NATO plans, defense articles—

(1) that are battle tanks, armoured combat vehicles, or artillery included within the CFE Treaty's definition of "conventional armaments and equipment limited by the Treaty";

(2) that were, as of the date of signature of the CFE Treaty, in the stocks of the Department of Defense and located in the CFE Treaty's area of application; and

(3) that the President determines are not needed by United States military forces within the CFE Treaty's area of application.

(b) ACCEPTANCE OF NATO ASSISTANCE IN ELIMINATING DIRECT COSTS OF TRANSFERS.—In order to eliminate direct costs of facilitating transfers of defense articles under subsection (a), the United States may utilize services provided by NATO or any NATO/CFE country, including inspection, repair, or transportation services with respect to defense articles so transferred.

(c) ACCEPTANCE OF NATO ASSISTANCE IN MEETING CERTAIN UNITED STATES OBLIGATIONS.—In order to facilitate United States compliance with the CFE Treaty-mandated obligations for destruction of conventional armaments and equipment limited by the CFE Treaty, the United States may utilize services or funds provided by NATO or any NATO/CFE country.

(d) AUTHORITY TO TRANSFER ON A GRANT BASIS.—Defense articles may be transferred under subsection (a) without cost to the recipient country.

(e) THIRD COUNTRY TRANSFERS RESTRICTIONS.—For purposes of sections 3(a)(2), 3(a)(3), 3(c), and 3(d) of this Act, defense articles transferred under subsection (a) of this section shall be deemed to have been sold under this Act.

(f) MAINTENANCE OF MILITARY BALANCE IN THE EASTERN MEDITERRANEAN.—The President shall ensure that transfers by the United States under subsection (a), taken together with transfers by other NATO/CFE countries in implementing the CFE Treaty, are of such valuations so as to be consistent with the United States

policy, embodied in section 620C of the Foreign Assistance Act of 1961, of maintaining the military balance in the Eastern Mediterranean.

(g) EXPIRATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority of subsection (a) expires at the end of the 40–month period beginning on the date on which the CFE Treaty enters into force.

(2) TRANSITION RULE.—Paragraph (1) does not apply with respect to a transfer of defense articles for which notification under section 94(a) is submitted before the end of the period described in that paragraph.

SEC. 94. [22 U.S.C. 2799c] NOTIFICATIONS AND REPORTS TO CONGRESS.

(a) NOTIFICATIONS.—Not less than 15 days before transferring any defense articles pursuant to section 93(a), the President shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of the Foreign Assistance Act of 1961.

(b) ANNUAL REPORTS.—Not later than February 1 each year, the President shall submit to the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report that—

(1) lists all transfers made to each recipient NATO/CFE country by the United States under section 93(a) during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 91; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional armaments and equipment limited by the CFE Treaty—

(A) by each NATO/CFE country (other than the United States) in implementing the CFE Treaty, and

(B) by each country of the Eastern Group of States Parties in implementing the CFE Treaty.

SEC. 95. [22 U.S.C. 2799d] DEFINITIONS.

As used in this chapter—

(1) the term "CFE Treaty" means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1990);

(2) the term "conventional armaments and equipment limited by the CFE Treaty" has the same meaning as the term "conventional armaments and equipment limited by the Treaty" does under paragraph 1(J) of article II of the CFE Treaty;

(3) the term "NATO" means the North Atlantic Treaty Organization;

(4) the term "NATO/CFE country" means a member country of NATO that is a party to the CFE Treaty and is listed in paragraph 1(A) of article II of the CFE Treaty within the

group of States Parties that signed or acceded to the Treaty of Brussels of 1948 or the Treaty of Washington of 1949 (the North Atlantic Treaty); and

(5) the term "country of the Eastern Group of States Parties" means a country that is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1955 or a successor state to such a country.

CHAPTER 10—NUCLEAR NONPROLIFERATION CONTROLS

SEC. 101. [22 U.S.C. 2799aa] NUCLEAR ENRICHMENT TRANSFERS.

(a) PROHIBITIONS; SAFEGUARDS AND MANAGEMENT.—Except as provided in subsection (b) of this section, no funds made available to carry out the Foreign Assistance Act of 1961 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines delivers nuclear enrichment equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977, unless before such delivery—

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) CERTIFICATION BY PRESIDENT OF NECESSITY OF CONTINUED ASSISTANCE; DISAPPROVAL BY CONGRESS.—(1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that—

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing

of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

SEC. 102. [22 U.S.C. 2799aa–1] NUCLEAR REPROCESSING TRANSFERS, ILLEGAL EXPORTS FOR NUCLEAR EXPLOSIVE DEVICES, TRANSFERS OF NUCLEAR EXPLOSIVE DEVICES, AND NUCLEAR DETONATIONS.

(a) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OF NUCLEAR REPROCESSING EQUIPMENT, MATERIALS, OR TECHNOLOGY; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) Except as provided in paragraph (2) of this subsection, no funds made available to carry out the Foreign Assistance Act of 1961 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines—

(A) delivers nuclear reprocessing equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977 (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing), or

(B) is a non-nuclear-weapon state which, on or after August 8, 1985, exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology which would contribute significantly to the ability of such country to manufacture a nuclear explosive device, if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of a nuclear explosive device.

For purposes of clause (B), an export (or attempted export) by a person who is an agent of, or is otherwise acting on behalf of or in the interests of, a country shall be considered to be an export (or attempted export) by that country.

(2) Notwithstanding paragraph (1) of this subsection, the President in any fiscal year may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing during that fiscal year to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) Except as provided in paragraphs (4), (5), and (6), in the event that the President determines that any country, after the effective date of part B of the Nuclear Proliferation Prevention Act of 1994—

(A) transfers to a non-nuclear-weapon state a nuclear explosive device,

(B) is a non-nuclear-weapon state and either—

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device,

(C) transfers to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(D) is a non-nuclear-weapon state and seeks and receives any design information or component which is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in paragraph (2) against that country.

(2) The sanctions referred to in paragraph (1) are as follows:

(A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for humanitarian assistance or food or other agricultural commodities.

(B) The United States Government shall terminate—

(i) sales to that country under this Act of any defense articles, defense services, or design and construction services, and

(ii) licenses for the export to that country of any item on the United States Munitions List.

(C) The United States Government shall terminate all foreign military financing for that country under this Act.

(D) The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the

United States Government, except that the sanction of this subparagraph shall not apply—

(i) to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities),

(ii) to medicines, medical equipment, and humanitarian assistance, or

(iii) to any credit, credit guarantee, or financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity.

(E) The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial or technical assistance to that country by any international financial institution.

(F) The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities, which includes fertilizer.

(G) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities).

(3) As used in this subsection—

(A) the term "design information" means specific information that relates to the design of a nuclear explosive device and that is not available to the public; and

(B) the term "component" means a specific component of a nuclear explosive device.

(4)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, delay the imposition of sanctions which would otherwise be required under paragraph (1)(A) or (1)(B) of this subsection if the President first transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (5) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate in accordance with subparagraph (C) of this paragraph.

(C) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section

601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(D) For purposes of this paragraph, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress having received on ____ a certification by the President under section 102(b)(4) of the Arms Export Control Act with respect to ____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 102(b)(5) of that Act.", with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

(5) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (4) of this subsection, the President may waive any sanction which would otherwise be required under paragraph (1)(A) or (1)(B) if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(6)(A) In the event the President is required to impose sanctions against a country under paragraph (1)(C) or (1)(D), the President shall forthwith so inform such country and shall impose the required sanctions beginning 30 days after submitting to the Congress the report required by paragraph (1) unless, and to the extent that, there is enacted during the 30-day period a law prohibiting the imposition of such sanctions.

(B) Notwithstanding any other provision of law, the sanctions which are required to be imposed against a country under paragraph (1)(C) or (1)(D) shall not apply if the President determines and certifies in writing to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that the application of such sanctions against such country would have a serious adverse effect on vital United States interests. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(7) For purposes of this subsection, continuity of session is broken only by an adjournment of 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 the computation of any period of time in which Congress is in continuous session.

(8) The President may not delegate or transfer his power, authority, or discretion to make or modify determinations under this subsection.

(c) NON-NUCLEAR-WEAPON STATE DEFINED.—As used in this section, the term "non-nuclear-weapon state" means any country which is not a nuclear-weapon state, as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

SEC. 103. [22 U.S.C. 2799aa–2] DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.

As used in this chapter, the term "nuclear explosive device" has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994.

b. Landmine Export Moratorium

(Section 1365 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484))

SEC. 1365. [22 U.S.C. 2778 note] LANDMINE EXPORT MORATORIUM.

(a) FINDINGS.—The Congress makes the following findings:

(1) Anti-personnel landmines, which are specifically designed to maim and kill people, have been used indiscriminately in dramatically increasing numbers, primarily in insurgencies in poor developing countries. Noncombatant civilians, including tens of thousands of children, have been the primary victims.

(2) Unlike other military weapons, landmines often remain implanted and undiscovered after conflict has ended, causing untold suffering to civilian populations. In Afghanistan, Cambodia, Laos, Vietnam, and Angola, tens of millions of unexploded landmines have rendered whole areas uninhabitable. In Afghanistan, an estimated hundreds of thousands of people have been maimed and killed by landmines during the 14-year civil war. In Cambodia, more than 20,000 civilians have lost limbs and another 60 are being maimed each month from landmines.

(3) Over 35 countries are known to manufacture landmines, including the United States. However, the United States is not a major exporter of landmines. During the past ten years the Department of State has approved ten licenses for the commercial export of anti-personnel landmines valued at $980,000, and during the past five years the Department of Defense has approved the sale of 13,156 anti-personnel landmines valued at $841,145.

(4) The United States signed, but has not ratified, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Convention prohibits the indiscriminate use of landmines.

(5) When it signed the Convention, the United States stated: "We believe that the Convention represents a positive step forward in efforts to minimize injury or damage to the civilian population in time of armed conflict. Our signature of the Convention reflects the general willingness of the United States to adopt practical and reasonable provisions concerning the conduct of military operations, for the purpose of protecting noncombatants.".

(6) The President should submit the Convention to the Senate for its advice and consent to ratification, and the President should actively negotiate under United Nations auspices or other auspices an international agreement, or a modification of the Convention, to prohibit the sale, transfer or export of

anti-personnel landmines. Such an agreement or modification would be an appropriate response to the end of the Cold War and the promotion of arms control agreements to reduce the indiscriminate killing and maiming of civilians.

(7) The United States should set an example for other countries in such negotiations, by implementing a one-year moratorium on the sale, transfer or export of anti-personnel landmines.

(b) STATEMENT OF POLICY.—(1) It shall be the policy of the United States to seek verifiable international agreements prohibiting the sale, transfer, or export, and further limiting the use, production, possession, and deployment of anti-personnel landmines.

(2) It is the sense of the Congress that the President should actively seek to negotiate under United Nations auspices or other auspices an international agreement, or a modification of the Convention, to prohibit the sale, transfer, or export of anti-personnel landmines.

(c) MORATORIUM ON TRANSFERS OF ANTI-PERSONNEL LANDMINES ABROAD.—During the eight-year period [1] beginning on October 23, 1992—

(1) no sale may be made or financed, no transfer may be made, and no license for export may be issued, under the Arms Export Control Act, with respect to any anti-personnel landmine; and

(2) no assistance may be provided under the Foreign Assistance Act of 1961, with respect to the provision of any anti-personnel landmine.

(e) DEFINITION.—For purposes of this section, the term "anti-personnel landmine" means—

(1) any munition placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person;

(2) any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;

(3) any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.

---

[1] Section 553 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as enacted into law by section 1000(a)(2) of Public Law 106–113 (113 Stat. 1535)), sought to amend subsection (c) by striking "During the five-year period beginning on October 23, 1992" and inserting "During the 11-year period beginning on October 23, 1992". However, the "five-year period" had been changed to an "eight-year period" by section 556 of Public Law 104–208 (110 Stat. 3009–161) so the amendment could not be executed.

c. Export Controls and Reporting Requirements Regarding High Performance Computers

(Sections 1211–1215 and 3157 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85))

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle B—Export Controls on High Performance Computers

SEC. 1211. [50 U.S.C. App. 2404 note] EXPORT APPROVALS FOR HIGH PERFORMANCE COMPUTERS.

(a) PRIOR APPROVAL OF EXPORTS AND REEXPORTS.—The President shall require that no digital computer with a composite theoretical performance level of more than 2,000 millions of theoretical operations per second (MTOPS) or with such other composite theoretical performance level as may be established subsequently by the President under subsection (d), may be exported or reexported without a license to a country specified in subsection (b) if the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, or the Director of the Arms Control and Disarmament Agency objects, in writing, to such export or reexport. Any person proposing to export or reexport such a digital computer shall so notify the Secretary of Commerce, who, within 24 hours after receiving the notification, shall transmit the notification to the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency.

(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under subsection (e).

(c) TIME LIMIT.—Written objections under subsection (a) to an export or reexport shall be raised within 10 days after the notification is received under subsection (a). If such a written objection to the export or reexport of a computer is raised, the computer may be exported or reexported only pursuant to a license issued by the Secretary of Commerce under the Export Administration Regulations of the Department of Commerce, without regard to the licensing exceptions otherwise authorized under section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997. If no objection is raised within the 10-day period, the export or reexport is authorized.

(d) ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE.—[1]The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may establish a new composite theoretical performance level for purposes of subsection (a). Such new level shall not take effect until 60 days after the President submits to the congressional committees designated in section 1215 a report setting forth the new composite theoretical performance level and the justification for such new level. Each report shall, at a minimum—

(1) address the extent to which high performance computers of a composite theoretical level between the level established in subsection (a) or such level as has been previously adjusted pursuant to this section and the new level, are available from other countries;

(2) address all potential uses of military significance to which high performance computers at the new level could be applied; and

(3) assess the impact of such uses on the national security interests of the United States.

(e) ADJUSTMENT OF COVERED COUNTRIES.—

(1) IN GENERAL.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may add a country to or remove a country from the list of covered countries in subsection (b), except that a country may be removed from the list only in accordance with paragraph (2).

(2) DELETIONS FROM LIST OF COVERED COUNTRIES.—The removal of a country from the list of covered countries under subsection (b) shall not take effect until 120 days after the President submits to the congressional committees designated in section 1215 a report setting forth the justification for the deletion.

(3) EXCLUDED COUNTRIES.—A country may not be removed from the list of covered countries under subsection (b) if—

(A) the country is a "nuclear-weapon state" (as defined by Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons) and the country is not a member of the North Atlantic Treaty Organization; or

(B) the country is not a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons and the country is listed on Annex 2 to the Comprehensive Nuclear Test-Ban Treaty.

(f) CLASSIFICATION.—Each report under subsections (d) and (e) shall be submitted in an unclassified form and may, if necessary, have a classified supplement.

---

[1] Section 314 of the Legislative Branch Appropriations Act, 2001 (as enacted by section 1(a)(2) of Public Law 106–554; 50 U.S.C. App. 2404 note), provides as follows:

SEC. 314. REVIEW OF PROPOSED CHANGES TO EXPORT THRESHOLDS FOR COMPUTERS. Not more than 50 days after the date of the submission of the report referred to in subsection (d) of section 1211 of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note), the Comptroller General of the United States shall submit an assessment to Congress which contains an analysis of the new computer performance levels being proposed by the President under such section.

(g) DELEGATION OF OBJECTION AUTHORITY WITHIN THE DEPARTMENT OF DEFENSE.—For the purposes of the Department of Defense, the authority to issue an objection referred to in subsection (a) shall be executed for the Secretary of Defense by an official at the Assistant Secretary level within the office of the Under Secretary of Defense for Policy. In implementing subsection (a), the Secretary of Defense shall ensure that Department of Defense procedures maximize the ability of the Department of Defense to be able to issue an objection within the 10-day period specified in subsection (c).

(h) CALCULATION OF 60-DAY PERIOD.—The 60-day period referred to in subsection (d) shall be calculated by excluding the days on which either House of Congress is not in session because of an adjournment of the Congress sine die.

SEC. 1212. [50 U.S.C. App. 2404 note] REPORT ON EXPORTS OF HIGH PERFORMANCE COMPUTERS.

(a) REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide to the congressional committees specified in section 1215 a report identifying all exports of digital computers with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) to all countries since January 25, 1996. For each export, the report shall identify—

(1) whether an export license was applied for and whether one was granted;

(2) the date of the transfer of the computer;

(3) the United States manufacturer and exporter of the computer;

(4) the MTOPS level of the computer; and

(5) the recipient country and end user.

(b) ADDITIONAL INFORMATION ON EXPORTS TO CERTAIN COUNTRIES.—In the case of exports to countries specified in subsection (c), the report under subsection (a) shall identify the intended end use for the exported computer and the assessment by the executive branch of whether the end user is a military end user or an end user involved in activities relating to nuclear, chemical, or biological weapons or missile technology. Information provided under this subsection may be submitted in classified form if necessary.

(c) COVERED COUNTRIES.—For purposes of subsection (b), the countries specified in this subsection are—

(1) the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997; and

(2) the countries listed in section 740.7(e) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

SEC. 1213. [50 U.S.C. App. 2404 note] POST-SHIPMENT VERIFICATION OF EXPORT OF HIGH PERFORMANCE COMPUTERS.

(a) REQUIRED POST-SHIPMENT VERIFICATION.—The Secretary of Commerce shall conduct post-shipment verification of each digital computer with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) that is exported from the United States, on or after the date of the enactment of this Act, to a country specified in subsection (b).

(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under section 1211(e).

(c) ANNUAL REPORT.—The Secretary of Commerce shall submit to the congressional committees specified in section 1215 an annual report on the results of post-shipment verifications conducted under this section during the preceding year. Each such report shall include a list of all such items exported from the United States to such countries during the previous year and, with respect to each such export, the following:

(1) The destination country.
(2) The date of export.
(3) The intended end use and intended end user.
(4) The results of the post-shipment verification.

(d) EXPLANATION WHEN VERIFICATION NOT CONDUCTED.—If a post-shipment verification has not been conducted in accordance with subsection (a) with respect to any such export during the period covered by a report, the Secretary shall include in the report for that period a detailed explanation of the reasons why such a post-shipment verification was not conducted.

(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

SEC. 1214. [50 U.S.C. App. 2404 note] GAO STUDY ON CERTAIN COMPUTERS; END USER INFORMATION ASSISTANCE.

(a) IN GENERAL.—The Comptroller General of the United States shall submit to the congressional committees specified in section 1215 a study of the national security risks relating to the sale of computers with a composite theoretical performance of between 2,000 and 7,000 millions of theoretical operations per second (MTOPS) to end users in countries specified in subsection (c). The study shall also analyze any foreign availability of computers described in the preceding sentence and the impact of such sales on United States exporters.

(b) END USER INFORMATION ASSISTANCE TO EXPORTERS.—The Secretary of Commerce shall establish a procedure by which exporters may seek information on questionable end users in countries specified in subsection (c) who are seeking to obtain computers described in subsection (a).

(c) COVERED COUNTRIES.—For purposes of subsections (a) and (b), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

SEC. 1215. [50 U.S.C. App. 2404 note] CONGRESSIONAL COMMITTEES.

For purposes of sections 1211(d), 1212(a), 1213(c), and 1214(a) the congressional committees specified in those sections are the following:

(1) The Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

(2) The Committee on International Relations and the Committee on Armed Services of the House of Representatives.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle D—Other Matters

* * * * * * *

SEC. 3157. [50 U.S.C. App. 2404 note] REPORTS ON ADVANCED SUPERCOMPUTER SALES TO CERTAIN FOREIGN NATIONS.

(a) REPORTS.—The Secretary of Energy shall require that any company that is a participant in the Accelerated Strategic Computing Initiative (ASCI) program of the Department of Energy report to the Secretary and to the Secretary of Defense each sale by that company to a country designated as a Tier III country of a computer capable of operating at a speed in excess of 2,000 millions theoretical operations per second (MTOPS). The report shall include a description of the following with respect to each such sale:

(1) The anticipated end-use of the computer sold.

(2) The software included with the computer.

(3) Any arrangement under the terms of the sale regarding—

(A) upgrading the computer;

(B) servicing the computer; or

(C) furnishing spare parts for the computer.

(b) COVERED COUNTRIES.—For purposes of this section, the countries designated as Tier III countries are the countries listed as "computer tier 3" eligible countries in part 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997 (or any successor list).

(c) QUARTERLY SUBMISSION OF REPORTS.—The Secretary of Energy shall require that reports under subsection (a) be submitted quarterly.

(d) ANNUAL REPORT.—The Secretary of Energy shall submit to Congress an annual report containing all information received under subsection (a) during the preceding year. The first annual report shall be submitted not later than July 1, 1998.

(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for the purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

d. Satellite Export Controls

(Subtitle B of title XV of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261))

Subtitle B—Satellite Export Controls

SEC. 1511. [22 U.S.C. 2778 note] SENSE OF CONGRESS.

It is the sense of Congress that—

(1) United States business interests must not be placed above United States national security interests;

(2) United States foreign policy and the policies of the United States regarding commercial relations with other countries should affirm the importance of observing and adhering to the Missile Technology Control Regime (MTCR);

(3) the United States should encourage universal observance of the Guidelines to the Missile Technology Control Regime;

(4) the exportation or transfer of advanced communication satellites and related technologies from United States sources to foreign recipients should not increase the risks to the national security of the United States;

(5) due to the military sensitivity of the technologies involved, it is in the national security interests of the United States that United States satellites and related items be subject to the same export controls that apply under United States law and practices to munitions;

(6) the United States should not issue any blanket waiver of the suspensions contained in section 902 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246), regarding the export of satellites of United States origin intended for launch from a launch vehicle owned by the People's Republic of China;

(7) the United States should pursue policies that protect and enhance the United States space launch industry; and

(8) the United States should not export to the People's Republic of China missile equipment or technology that would improve the missile or space launch capabilities of the People's Republic of China.

SEC. 1512. [22 U.S.C. 2778 note] CERTIFICATION OF EXPORTS OF MISSILE EQUIPMENT OR TECHNOLOGY TO CHINA.

(a) CERTIFICATION.—The President shall certify to the Congress at least 15 days in advance of any export to the People's Republic of China of missile equipment or technology (as defined in section 74 of the Arms Export Control Act (22 U.S.C. 2797c)) that—

(1) such export is not detrimental to the United States space launch industry; and

(2) the missile equipment or technology, including any indirect technical benefit that could be derived from such export, will not measurably improve the missile or space launch capabilities of the People's Republic of China.

(b) EXCEPTION.—The certification requirement contained in subsection (a) shall not apply to the export of inertial reference units and components in manned civilian aircraft or supplied as spare or replacement parts for such aircraft.

SEC. 1513. [22 U.S.C. 2778 note] SATELLITE CONTROLS UNDER THE UNITED STATES MUNITIONS LIST.

(a) CONTROL OF SATELLITES ON THE UNITED STATES MUNITIONS LIST.—Notwithstanding any other provision of law, all satellites and related items that are on the Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.) on the date of the enactment of this Act shall be transferred to the United States Munitions List and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) DEFENSE TRADE CONTROLS REGISTRATION FEES.—[Omitted—Amendments]

(c) EFFECTIVE DATE.—(1) Subsection (a) shall take effect on March 15, 1999, and shall not apply to any export license issued before such effective date or to any export license application made under the Export Administration Regulations before such effective date.

(2) The amendments made by subsection (b) shall be effective as of October 1, 1998.

(d) REPORT.—Not later than January 1, 1999, the Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, shall submit to Congress a report containing—

(1) a detailed description of the plans of the Department of State to implement the requirements of this section, including any organizational changes that are required and any Executive orders or regulations that may be required;

(2) an identification and explanation of any steps that should be taken to improve the license review process for exports of the satellites and related items described in subsection (a), including measures to shorten the timelines for license application reviews, and any measures relating to the transparency of the license review process and dispute resolution procedures;

(3) an evaluation of the adequacy of resources available to the Department of State, including fiscal and personnel resources, to carry out the additional activities required by this section; and

(4) any recommendations for additional actions, including possible legislation, to improve the export licensing process under the Arms Export Control Act for the satellites and related items described in subsection (a).

SEC. 1514. [22 U.S.C. 2778 note] NATIONAL SECURITY CONTROLS ON SATELLITE EXPORT LICENSING.

(a) ACTIONS BY THE PRESIDENT.—Notwithstanding any other provision of law, the President shall take such actions as are necessary to implement the following requirements for improving na-

tional security controls in the export licensing of satellites and related items:

(1) MANDATORY TECHNOLOGY CONTROL PLANS.—All export licenses shall require a technology transfer control plan approved by the Secretary of Defense and an encryption technology transfer control plan approved by the Director of the National Security Agency.

(2) MANDATORY MONITORS AND REIMBURSEMENT.—

(A) MONITORING OF PROPOSED FOREIGN LAUNCH OF SATELLITES.—In any case in which a license is approved for the export of a satellite or related items for launch in a foreign country, the Secretary of Defense shall monitor all aspects of the launch in order to ensure that no unauthorized transfer of technology occurs, including technical assistance and technical data. The costs of such monitoring services shall be fully reimbursed to the Department of Defense by the person or entity receiving such services. All reimbursements received under this subparagraph shall be credited to current appropriations available for the payment of the costs incurred in providing such services.

(B) CONTENTS OF MONITORING.—The monitoring under subparagraph (A) shall cover, but not be limited to—

(i) technical discussions and activities, including the design, development, operation, maintenance, modification, and repair of satellites, satellite components, missiles, other equipment, launch facilities, and launch vehicles;

(ii) satellite processing and launch activities, including launch preparation, satellite transportation, integration of the satellite with the launch vehicle, testing and checkout prior to launch, satellite launch, and return of equipment to the United States;

(iii) activities relating to launch failure, delay, or cancellation, including post-launch failure investigations; and

(iv) all other aspects of the launch.

(3) MANDATORY LICENSES FOR CRASH-INVESTIGATIONS.—In the event of the failure of a launch from a foreign country of a satellite of United States origin—

(A) the activities of United States persons or entities in connection with any subsequent investigation of the failure are subject to the controls established under section 38 of the Arms Export Control Act, including requirements for licenses issued by the Secretary of State for participation in that investigation;

(B) officials of the Department of Defense shall monitor all activities associated with the investigation to insure against unauthorized transfer of technical data or services; and

(C) the Secretary of Defense shall establish and implement a technology transfer control plan for the conduct of the investigation to prevent the transfer of information that could be used by the foreign country to improve its missile or space launch capabilities.

(4) MANDATORY NOTIFICATION AND CERTIFICATION.—All technology transfer control plans for satellites or related items shall require any United States person or entity involved in the export of a satellite of United States origin or related items to notify the Department of Defense in advance of all meetings and interactions with any foreign person or entity providing launch services and require the United States person or entity to certify after the launch that it has complied with this notification requirement.

(5) MANDATORY INTELLIGENCE COMMUNITY REVIEW.—The Secretary of Commerce and the Secretary of State shall provide to the Secretary of Defense and the Director of Central Intelligence copies of all export license applications and technical assistance agreements submitted for approval in connection with launches in foreign countries of satellites to verify the legitimacy of the stated end-user or end-users.

(6) MANDATORY SHARING OF APPROVED LICENSES AND AGREEMENTS.—The Secretary of State shall provide copies of all approved export licenses and technical assistance agreements associated with launches in foreign countries of satellites to the Secretaries of Defense and Energy, the Director of Central Intelligence, and the Director of the Arms Control and Disarmament Agency.

(7) MANDATORY NOTIFICATION TO CONGRESS ON LICENSES.—Upon issuing a license for the export of a satellite or related items for launch in a foreign country, the head of the department or agency issuing the license shall so notify Congress.

(8) MANDATORY REPORTING ON MONITORING ACTIVITIES.—The Secretary of Defense shall provide to Congress an annual report on the monitoring of all launches in foreign countries of satellites of United States origin.

(9) ESTABLISHING SAFEGUARDS PROGRAM.—The Secretary of Defense shall establish a program for recruiting, training, and maintaining a staff dedicated to monitoring launches in foreign countries of satellites and related items of United States origin.

(b) EXCEPTION.—This section shall not apply to the export of a satellite or related items for launch in, or by nationals of, a country that is a member of the North Atlantic Treaty Organization or that is a major non-NATO ally of the United States.

(c) EFFECTIVE DATE.—The President shall take the actions required by subsection (a) not later than 45 days after the date of the enactment of this Act.

SEC. 1515. [22 U.S.C. 2778 note] REPORT ON EXPORT OF SATELLITES FOR LAUNCH BY PEOPLE'S REPUBLIC OF CHINA.

(a) REQUIREMENT FOR REPORT.—Each report to Congress submitted pursuant to subsection (b) of section 902 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2151 note; Public Law 101–246) to waive the restrictions contained in subsection (a) of that section on the export to the People's Republic of China of any satellite of United States origin or related items shall be accompanied by a detailed justification setting forth the following:

(1) A detailed description of all militarily sensitive characteristics integrated within, or associated with, the satellite.

(2) An estimate of the number of United States civilian contract personnel expected to be needed in country to carry out the proposed satellite launch.

(3)(A) A detailed description of the United States Government's plan to monitor the proposed satellite launch to ensure that no unauthorized transfer of technology occurs, together with an estimate of the number of officers and employees of the United States that are expected to be needed in country to carry out monitoring of the proposed satellite launch; and

(B) the estimated cost to the Department of Defense of monitoring the proposed satellite launch and the amount of such cost that is to be reimbursed to the department.

(4) The reasons why the proposed satellite launch is in the national security interest of the United States.

(5) The impact of the proposed export on employment in the United States, including the number of new jobs created in the United States, on a State-by-State basis, as a direct result of the proposed export.

(6) The number of existing jobs in the United States that would be lost, on a State-by-State basis, as a direct result of the proposed export not being licensed.

(7) The impact of the proposed export on the balance of trade between the United States and the People's Republic of China and on reducing the current United States trade deficit with the People's Republic of China.

(8) The impact of the proposed export on the transition of the People's Republic of China from a nonmarket economy to a market economy and the long-term economic benefit to the United States.

(9) The impact of the proposed export on opening new markets to United States-made products through the purchase by the People's Republic of China of United States-made goods and services not directly related to the proposed export.

(10) The impact of the proposed export on reducing acts, policies, and practices that constitute significant trade barriers to United States exports or foreign direct investment in the People's Republic of China by United States nationals.

(11) The increase that will result from the proposed export in the overall market share of the United States for goods and services in comparison to Japan, France, Germany, the United Kingdom, and Russia.

(12) The impact of the proposed export on the willingness of the People's Republic of China to modify its commercial and trade laws, practices, and regulations to make United States-made goods and services more accessible to that market.

(13) The impact of the proposed export on the willingness of the People's Republic of China to reduce formal and informal trade barriers and tariffs, duties, and other fees on United States-made goods and services entering that country.

(b) MILITARILY SENSITIVE CHARACTERISTICS DEFINED.—In this section, the term "militarily sensitive characteristics" includes antijamming capability, antennas, crosslinks, baseband processing,

encryption devices, radiation-hardened devices, propulsion systems, pointing accuracy, kick motors, and other such characteristics as are specified by the Secretary of Defense.

SEC. 1516. [22 U.S.C. 2778 note] RELATED ITEMS DEFINED.

In this subtitle, the term "related items" means the satellite fuel, ground support equipment, test equipment, payload adapter or interface hardware, replacement parts, and non-embedded solid propellant orbit transfer engines described in the report submitted to Congress by the Department of State on February 6, 1998, pursuant to section 38(f) of the Arms Export Control Act (22 U.S.C. 2778(f)).

e. Release of Export Information and Nuclear Export Reporting

(Sections 1522 and 1523 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261))

SEC. 1522. [50 U.S.C. APP. 2404 note] RELEASE OF EXPORT INFORMATION BY DEPARTMENT OF COMMERCE TO OTHER AGENCIES FOR PURPOSE OF NATIONAL SECURITY ASSESSMENT.

(a) RELEASE OF EXPORT INFORMATION.—The Secretary of Commerce shall, upon the written request of an official specified in subsection (c), transmit to that official any information relating to exports that is held by the Department of Commerce and is requested by that official for the purpose of assessing national security risks. The Secretary shall transmit such information within 10 business days after receiving such a request.

(b) NATURE OF INFORMATION.—The information referred to in subsection (a) includes information concerning—

(1) export licenses issued by the Department of Commerce;

(2) exports that were carried out under an export license issued by the Department of Commerce; and

(3) exports from the United States that were carried out without an export license.

(c) REQUESTING OFFICIALS.—The officials referred to in subsection (a) are the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of Central Intelligence. Each of those officials may delegate to any other official within their respective departments and agency the authority to request information under subsection (a).

SEC. 1523. [42 U.S.C. 2155 note] NUCLEAR EXPORT REPORTING REQUIREMENT.

(a) NOTIFICATION OF CONGRESS.—The President shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives upon the granting of a license by the Nuclear Regulatory Commission for the export or reexport of any nuclear-related technology or equipment, including source material, special nuclear material, or equipment or material especially designed or prepared for the processing, use, or production of special nuclear material.

(b) APPLICABILITY.—The requirements of this section shall apply only to an export or reexport to a country that—

(1) the President has determined is a country that has detonated a nuclear explosive device; and

(2) is not a member of the North Atlantic Treaty Organization.

(c) CONTENT OF NOTIFICATION.—The notification required pursuant to this section shall include—

(1) a detailed description of the articles or services to be exported or reexported, including a brief description of the capabilities of any article to be exported or reexported;

(2) an estimate of the number of officers and employees of the United States Government and of United States Government civilian contract personnel expected to be required in such country to carry out the proposed export or reexport;

(3) the name of each licensee expected to provide the article or service proposed to be sold and a description from the licensee of any offset agreements proposed to be entered into in connection with such sale (if known on the date of transmittal of such statement);

(4) the projected delivery dates of the articles or services to be exported or reexported; and

(5) the extent to which the recipient country in the previous two years has engaged in any of the actions specified in subparagraph (A), (B), or (C) of section 129(2) of the Atomic Energy Act of 1954.

f. Enhancement of Technology Security Program of the Department of Defense

(Section 912 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65))

SEC. 912. ENHANCEMENT OF TECHNOLOGY SECURITY PROGRAM OF DEPARTMENT OF DEFENSE.

(a) SPECIFICATION OF TECHNOLOGY SECURITY DIRECTORATE.—For purposes of this section, a reference to the Technology Security Directorate is a reference to the element within the Defense Threat Reduction Agency of the Department of Defense having responsibility for technology security matters (known as of the date of the enactment of this Act as the Technology Security Directorate).

(b) FUNCTIONS.—The head of the Technology Security Directorate shall have authority to advise the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Policy, on policy issues related to the transfer of strategically sensitive technology, including issues relating to the following:

(1) Strategic trade.
(2) Defense cooperative programs.
(3) Science and technology agreements and exchanges.
(4) Export of munitions items.
(5) International memorandums of understanding.
(6) Foreign acquisitions.

(c) RESOURCES FOR TECHNOLOGY SECURITY DIRECTORATE.—The Secretary of Defense shall ensure that the head of the Technology Security Directorate has appropriate personnel and fiscal resources available, and receives all necessary support, to carry out the missions of the Directorate efficiently and effectively.

(d) APPROVAL AUTHORITY OF UNDER SECRETARY FOR POLICY.—Staff and resources of the Technology Security Directorate may not be used to fulfill any requirement or activity of the Defense Threat Reduction Agency that does not directly relate to the technology security and export control missions of the Technology Security Directorate except with the prior approval of the Under Secretary of Defense for Policy.

(e) REPORT ON EXPORT CONTROL RESOURCES.—Not later than March 1, 2000, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the personnel and budget resources of the Technology Security Directorate as of October 1, 1998, and as of September 30, 1999, as well as any planned increases in those resources for fiscal years 2000 and 2001. The report shall include the following:

(1) Numbers of personnel, measured in full-time equivalents.
(2) Number of license applications reviewed.
(3) The budget of the Technology Security Directorate.

(4) The number of personnel during the preceding fiscal year assigned to the Technology Security Directorate who were assigned during that year to assist in activities of the Defense Threat Reduction Agency unrelated to technology security or export control issues, together with an explanation of the effect of any such assignment on the Directorate's ability to fulfill its mission.

g. Proliferation and Export Control Provisions of Public Law 106–65

(Title XIV of the National Defense Authorization Act for Fiscal Year 2000)

SEC. 1401. ADHERENCE OF PEOPLE'S REPUBLIC OF CHINA TO MISSILE TECHNOLOGY CONTROL REGIME.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should take all actions appropriate to obtain a bilateral agreement with the People's Republic of China to adhere to the Missile Technology Control Regime (MTCR) and the MTCR Annex; and

(2) the People's Republic of China should not be permitted to join the Missile Technology Control Regime as a member without having—

(A) agreed to the Missile Technology Control Regime and the specific provisions of the MTCR Annex;

(B) demonstrated a sustained and verified record of performance with respect to the nonproliferation of missiles and missile technology; and

(C) adopted an effective export control system for implementing guidelines under the Missile Technology Control Regime and the MTCR Annex.

(b) REPORT REQUIRED.—Not later than January 31, 2000, the President shall transmit to Congress a report explaining—

(1) the policy and commitments that the People's Republic of China has stated on its adherence to the Missile Technology Control Regime and the MTCR Annex;

(2) the degree to which the People's Republic of China is complying with its stated policy and commitments on adhering to the Missile Technology Control Regime and the MTCR Annex; and

(3) actions taken by the United States to encourage the People's Republic of China to adhere to the Missile Technology Control Regime and the MTCR Annex.

(c) DEFINITIONS.—In this section:

(1) MISSILE TECHNOLOGY CONTROL REGIME.—The term "Missile Technology Control Regime" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(2) MTCR ANNEX.—The term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the Missile Technology Control Regime, and any amendments thereto.

SEC. 1402. [22 U.S.C. 2778 note] ANNUAL REPORT ON TRANSFERS OF MILITARILY SENSITIVE TECHNOLOGY TO COUNTRIES AND ENTITIES OF CONCERN.

(a) ANNUAL REPORT.—Not later than March 30 of each year beginning in the year 2000 and ending in the year 2007, the President shall transmit to Congress a report on transfers to countries and entities of concern during the preceding calendar year of the most significant categories of United States technologies and technical information with potential military applications.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include, at a minimum, the following:

(1) An assessment by the Director of Central Intelligence of efforts by countries and entities of concern to acquire technologies and technical information referred to in subsection (a) during the preceding calendar year.

(2) An assessment by the Secretary of Defense, in consultation with the Joint Chiefs of Staff and the Director of Central Intelligence, of the cumulative impact of licenses granted by the United States for exports of technologies and technical information referred to in subsection (a) to countries and entities of concern during the preceding 5-calendar year period on—

(A) the military capabilities of such countries and entities; and

(B) countermeasures that may be necessary to overcome the use of such technologies and technical information.

(3) An audit by the Inspectors General of the Departments of Defense, State, Commerce, and Energy, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, of the policies and procedures of the United States Government with respect to the export of technologies and technical information referred to in subsection (a) to countries and entities of concern.

(4) The status of the implementation or other disposition of recommendations included in reports of audits by Inspectors General that have been set forth in a previous annual report under this section pursuant to paragraph (3).

(c) ADDITIONAL REQUIREMENT FOR FIRST REPORT.—The first annual report required by subsection (a) shall include an assessment by the Inspectors General of the Departments of State, Defense, Commerce, and the Treasury and the Inspector General of the Central Intelligence Agency of the adequacy of current export controls and counterintelligence measures to protect against the acquisition by countries and entities of concern of United States technology and technical information referred to in subsection (a).

(d) SUPPORT OF OTHER AGENCIES.—Upon the request of the officials responsible for preparing the assessments required by subsection (b), the heads of other departments and agencies shall make available to those officials all information necessary to carry out the requirements of this section.

(e) CLASSIFIED AND UNCLASSIFIED REPORTS.—Each report required by this section shall be submitted in classified form and unclassified form.

(f) DEFINITION.—As used in this section, the term "countries and entities of concern" means—

(1) any country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 or other applicable law, to have repeatedly provided support for acts of international terrorism;

(2) any country that—

(A) has detonated a nuclear explosive device (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 3201 note)); and

(B) is not a member of the North Atlantic Treaty Organization; and

(3) any entity that—

(A) is engaged in international terrorism or activities in preparation thereof; or

(B) is directed or controlled by the government of a country described in paragraph (1) or (2).

SEC. 1403. [22 U.S.C. 2778 note] RESOURCES FOR EXPORT LICENSE FUNCTIONS.

(a) OFFICE OF DEFENSE TRADE CONTROLS.—

(1) IN GENERAL.—The Secretary of State shall take the necessary steps to ensure that, in any fiscal year, adequate resources are allocated to the functions of the Office of Defense Trade Controls of the Department of State relating to the review and processing of export license applications so as to ensure that those functions are performed in a thorough and timely manner.

(2) AVAILABILITY OF EXISTING APPROPRIATIONS.—The Secretary of State shall take the necessary steps to ensure that those funds made available under the heading "Administration of Foreign Affairs, Diplomatic and Consular Programs" in title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277) are made available, upon the enactment of this Act, to the Office of Defense Trade Controls of the Department of State to carry out the purposes of the Office.

(b) DEFENSE THREAT REDUCTION AGENCY.—The Secretary of Defense shall take the necessary steps to ensure that, in any fiscal year, adequate resources are allocated to the functions of the Defense Threat Reduction Agency of the Department of Defense relating to the review of export license applications so as to ensure that those functions are performed in a thorough and timely manner.

(c) UPDATING OF STATE DEPARTMENT REPORT.—Not later than March 1, 2000, the Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, shall transmit to Congress a report updating the information reported to Congress under section 1513(d)(3) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2778 note).

SEC. 1404. [22 U.S.C. 2778 note] SECURITY IN CONNECTION WITH SATELLITE EXPORT LICENSING.

As a condition of the export license for any satellite to be launched in a country subject to section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2778 note), the Secretary of State shall require the following:

(1) That the technology transfer control plan required by section 1514(a)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2778 note) be prepared by the Department of Defense and the licensee, and that the plan set forth enhanced security arrangements for the launch of the satellite, both before and during launch operations.

(2) That each person providing security for the launch of that satellite—

(A) report directly to the launch monitor with regard to issues relevant to the technology transfer control plan;

(B) have received appropriate training in the International Trafficking in Arms Regulations (hereafter in this title referred to as "ITAR").

(C) have significant experience and expertise with satellite launches; and

(D) have been investigated in a manner at least as comprehensive as the investigation required for the issuance of a security clearance at the level designated as "Secret".

(3) That the number of such persons providing security for the launch of the satellite shall be sufficient to maintain 24-hour security of the satellite and related launch vehicle and other sensitive technology.

(4) That the licensee agree to reimburse the Department of Defense for all costs associated with the provision of security for the launch of the satellite.

SEC. 1405. [22 U.S.C. 2778 note] REPORTING OF TECHNOLOGY TRANSMITTED TO PEOPLE'S REPUBLIC OF CHINA AND OF FOREIGN LAUNCH SECURITY VIOLATIONS.

(a) MONITORING OF INFORMATION.—The Secretary of Defense shall require that space launch monitors of the Department of Defense assigned to monitor launches in the People's Republic of China maintain records of all information authorized to be transmitted to the People's Republic of China with regard to each space launch that the monitors are responsible for monitoring, including copies of any documents authorized for such transmission, and reports on launch-related activities.

(b) TRANSMISSION TO OTHER AGENCIES.—The Secretary of Defense shall ensure that records under subsection (a) are transmitted on a current basis to appropriate elements of the Department of Defense and to the Department of State, the Department of Commerce, and the Central Intelligence Agency.

(c) RETENTION OF RECORDS.—Records described in subsection (a) shall be retained for at least the period of the statute of limitations for violations of the Arms Export Control Act.

(d) GUIDELINES.—The Secretary of Defense shall prescribe guidelines providing space launch monitors of the Department of Defense with the responsibility and the ability to report serious security violations, problems, or other issues at an overseas launch site directly to the headquarters office of the responsible Department of Defense component.

SEC. 1406. REPORT ON NATIONAL SECURITY IMPLICATIONS OF EXPORTING HIGH-PERFORMANCE COMPUTERS TO THE PEOPLE'S REPUBLIC OF CHINA.

(a) REVIEW.—The President, in consultation with the Secretary of Defense and the Secretary of Energy, shall conduct a comprehensive review of the national security implications of exporting high-performance computers to the People's Republic of China. To the extent that such testing has not already been conducted by the Government, the President, as part of the review, shall conduct empirical testing of the extent to which national security-related operations can be performed using clustered, massively-parallel processing or other combinations of computers.

(b) REPORT.—The President 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 results of the review conducted under subsection (a). The report shall be submitted not later than 6 months after the date of the enactment of this Act in classified and unclassified form and shall be updated not later than February 1 of each of the years 2001 through 2004.

SEC. 1407. END-USE VERIFICATION FOR USE BY PEOPLE'S REPUBLIC OF CHINA OF HIGH-PERFORMANCE COMPUTERS.

(a) REVISED HPC VERIFICATION SYSTEM.—The President shall seek to enter into an agreement with the People's Republic of China to revise the existing verification system with the People's Republic of China with respect to end-use verification for high-performance computers exported or to be exported to the People's Republic of China so as to provide for an open and transparent system providing for effective end-use verification for such computers. The President shall transmit a copy of any such agreement to Congress.

(b) DEFINITION.—As used in this section and section 1406, the term "high-performance computer" means a computer which, by virtue of its composite theoretical performance level, would be subject to section 1211 of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note).

(c) ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE LEVELS FOR POST-SHIPMENT VERIFICATION.—[Omitted-Amendment]

SEC. 1408. [22 U.S.C. 2778 note] ENHANCED MULTILATERAL EXPORT CONTROLS.

(a) NEW INTERNATIONAL CONTROLS.—The President shall seek to establish new enhanced international controls on technology transfers that threaten international peace and United States national security.

(b) IMPROVED SHARING OF INFORMATION.—The President shall take appropriate actions to improve the sharing of information by nations that are major exporters of technology so that the United States can track movements of technology covered by the

Wassenaar Arrangement and enforce technology controls and re-export requirements for such technology.

(c) DEFINITION.—As used in this section, the term "Wassenaar Arrangement" means the multilateral export control regime covering conventional armaments and sensitive dual-use goods and technologies that was agreed to by 33 co-founding countries in July 1996 and began operation in September 1996.

SEC. 1409. [22 U.S.C. 2778 note] ENHANCEMENT OF ACTIVITIES OF DEFENSE THREAT REDUCTION AGENCY.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations to—

(1) authorize the personnel of the Defense Threat Reduction Agency (DTRA) who monitor satellite launch campaigns overseas to suspend such campaigns at any time if the suspension is required for purposes of the national security of the United States;

(2) ensure that persons assigned as space launch campaign monitors are provided sufficient training and have adequate experience in the regulations prescribed by the Secretary of State known as the ITAR and have significant experience and expertise with satellite technology, launch vehicle technology, and launch operations technology;

(3) ensure that adequate numbers of such monitors are assigned to space launch campaigns so that 24-hour, 7-day per week coverage is provided;

(4) take steps to ensure, to the maximum extent possible, the continuity of service by monitors for the entire space launch campaign period (from satellite marketing to launch and, if necessary, completion of a launch failure analysis);

(5) adopt measures designed to make service as a space launch campaign monitor an attractive career opportunity;

(6) allocate funds and other resources to the Agency at levels sufficient to prevent any shortfalls in the number of such personnel;

(7) establish mechanisms in accordance with the provisions of section 1514(a)(2)(A) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2175; 22 U.S.C. 2778 note) that provide for—

(A) the payment to the Department of Defense by the person or entity receiving the launch monitoring services concerned, before the beginning of a fiscal year, of an amount equal to the amount estimated to be required by the Department to monitor the launch campaigns during that fiscal year;

(B) the reimbursement of the Department of Defense, at the end of each fiscal year, for amounts expended by the Department in monitoring the launch campaigns in excess of the amount provided under subparagraph (A); and

(C) the reimbursement of the person or entity receiving the launch monitoring services if the amount provided under subparagraph (A) exceeds the amount actually expended by the Department of Defense in monitoring the launch campaigns;

(8) review and improve guidelines on the scope of permissible discussions with foreign persons regarding technology and technical information, including the technology and technical information that should not be included in such discussions;

(9) provide, in conjunction with other Federal agencies, on at least an annual basis, briefings to the officers and employees of United States commercial satellite entities on United States export license standards, guidelines, and restrictions, and encourage such officers and employees to participate in such briefings;

(10) establish a system for—

(A) the preparation and filing by personnel of the Agency who monitor satellite launch campaigns overseas of detailed reports of all relevant activities observed by such personnel in the course of monitoring such campaigns;

(B) the systematic archiving of reports filed under subparagraph (A); and

(C) the preservation of such reports in accordance with applicable laws; and

(11) establish a counterintelligence program within the Agency as part of its satellite launch monitoring program.

(b) ANNUAL REPORT ON IMPLEMENTATION OF SATELLITE TECHNOLOGY SAFEGUARDS.—(1) The Secretary of Defense and the Secretary of State shall each submit to Congress each year, as part of the annual report for that year under section 1514(a)(8) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, the following:

(A) A summary of the satellite launch campaigns and related activities monitored by the Defense Threat Reduction Agency during the preceding fiscal year.

(B) A description of any license infractions or violations that may have occurred during such campaigns and activities.

(C) A description of the personnel, funds, and other resources dedicated to the satellite launch monitoring program of the Agency during that fiscal year.

(D) An assessment of the record of United States satellite makers in cooperating with Agency monitors, and in complying with United States export control laws, during that fiscal year.

(2) Each report under paragraph (1) shall be submitted in classified form and unclassified form.

SEC. 1410. [22 U.S.C. 2778 note] TIMELY NOTIFICATION OF LICENSING DECISIONS BY THE DEPARTMENT OF STATE.

Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prescribe regulations to provide timely notice to the manufacturer of a commercial satellite of United States origin of the final determination of the decision on the application for a license involving the overseas launch of such satellite.

SEC. 1411. [22 U.S.C. 2778 note] ENHANCED INTELLIGENCE CONSULTATION ON SATELLITE LICENSE APPLICATIONS.

(a) CONSULTATION DURING REVIEW OF APPLICATIONS.—The Secretary of State and Secretary of Defense, as appropriate, shall

consult with the Director of Central Intelligence during the review of any application for a license involving the overseas launch of a commercial satellite of United States origin. The purpose of the consultation is to assure that the launch of the satellite, if the license is approved, will meet the requirements necessary to protect the national security interests of the United States.

(b) ADVISORY GROUP.—(1) The Director of Central Intelligence shall establish within the intelligence community an advisory group to provide information and analysis to Congress, and to appropriate departments and agencies of the Federal Government, on the national security implications of granting licenses involving the overseas launch of commercial satellites of United States origin.

(2) The advisory group shall include technically-qualified representatives of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the National Air Intelligence Center, and the Department of State Bureau of Intelligence and Research and representatives of other elements of the intelligence community with appropriate expertise.

(3) In addition to the duties under paragraph (1), the advisory group shall—

(A) review, on a continuing basis, information relating to transfers of satellite, launch vehicle, or other technology or knowledge with respect to the course of the overseas launch of commercial satellites of United States origin; and

(B) analyze the potential impact of such transfers on the space and military systems, programs, or activities of foreign countries.

(4) The Director of the Nonproliferation Center of the Central Intelligence Agency shall serve as chairman of the advisory group.

(5)(A) The advisory group shall, upon request (but not less often than annually), submit reports on the matters referred to in paragraphs (1) and (3) to the appropriate committees of Congress and to appropriate departments and agencies of the Federal Government.

(B) The first annual report under subparagraph (A) shall be submitted not later than one year after the date of the enactment of this Act.

(c) INTELLIGENCE COMMUNITY DEFINED.—In this section, the term "intelligence community" has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 1412. [22 U.S.C. 2278 note] INVESTIGATIONS OF VIOLATIONS OF EXPORT CONTROLS BY UNITED STATES SATELLITE MANUFACTURERS.

(a) NOTICE TO CONGRESS OF INVESTIGATIONS.—The President shall promptly notify the appropriate committees of Congress whenever an investigation is undertaken by the Department of Justice of—

(1) an alleged violation of United States export control laws in connection with a commercial satellite of United States origin; or

(2) an alleged violation of United States export control laws in connection with an item controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778) that is likely to

cause significant harm or damage to the national security interests of the United States.

(b) NOTICE TO CONGRESS OF CERTAIN EXPORT WAIVERS.—The President shall promptly notify the appropriate committees of Congress whenever an export waiver pursuant to section 902 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2151 note) is granted on behalf of any United States person that is the subject of an investigation described in subsection (a). The notice shall include a justification for the waiver.

(c) EXCEPTION.—The requirements in subsections (a) and (b) shall not apply if the President determines that notification of the appropriate committees of Congress under such subsections would jeopardize an on-going criminal investigation. If the President makes such a determination, the President shall provide written notification of such determination to the Speaker of the House of Representatives, the majority leader of the Senate, the minority leader of the House of Representatives, and the minority leader of the Senate. The notification shall include a justification for the determination.

(d) IDENTIFICATION OF PERSONS SUBJECT TO INVESTIGATION.—The Secretary of State and the Attorney General shall develop appropriate mechanisms to identify, for the purposes of processing export licenses for commercial satellites, persons who are the subject of an investigation described in subsection (a).

(e) PROTECTION OF CLASSIFIED AND OTHER SENSITIVE INFORMATION.—The appropriate committees of Congress shall ensure that appropriate procedures are in place to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is furnished to those committees pursuant to this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413).

(g) DEFINITIONS.—As used in this section:

(1) The term "appropriate committees of Congress" means the following:

(A) The Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is con-

trolled in fact by such domestic concern, as determined under regulations of the President.

5. NAVY MINE COUNTERMEASURES PROGRAMS

Section 216 of the National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

SEC. 216. MANAGEMENT OF NAVY MINE COUNTERMEASURES PROGRAMS.

(a) RESPONSIBILITY.—Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology shall have the primary responsibility for developing and testing naval mine countermeasures systems during fiscal years 1996 through 2003.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) with respect to any fiscal year if, coincident with the submission of the budget for that fiscal year, the Secretary certifies to the congressional defense committees that—

(1) the Secretary of the Navy, in consultation with the Chief of Naval Operations and the Commandant of the Marine Corps, has submitted to the Secretary of Defense an updated mine countermeasures master plan that identifies—

(A) technologies having promising potential for use for improving mine countermeasures; and

(B) programs for advancing those technologies into production;

(2) the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for that fiscal year and the multiyear defense program submitted to Congress in connection with that budget pursuant to section 114a of title 10, United States Code, propose sufficient resources for executing the updated mine countermeasures master plan; and

(3) the Chairman of the Joint Chiefs of Staff has determined that the budget resources for mine countermeasures and the updated mine countermeasures master plan are sufficient.

6. HIGH ENERGY LASER PROGRAMS

Subtitle D of title II of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

Subtitle D—High Energy Laser Programs

SEC. 241. FUNDING.

(a) FUNDING FOR FISCAL YEAR 2001.—(1) Of the amount authorized to be appropriated by section 201(4), $30,000,000 is authorized for high energy laser development.

(2) Funds available under this subsection are available to supplement the high energy laser programs of the military departments and Defense Agencies, as determined by the official designated under section 243.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Department of Defense should establish funding for high energy laser programs within the science and technology programs of each of the military departments and the Ballistic Missile Defense Organization; and

(2) the Secretary of Defense should establish a goal that basic, applied, and advanced research in high energy laser technology should constitute at least 4.5 percent of the total science and technology budget of the Department of Defense by fiscal year 2004.

SEC. 242. IMPLEMENTATION OF HIGH ENERGY LASER MASTER PLAN.

The Secretary of Defense shall implement the management and organizational structure specified in the Department of Defense High Energy Laser Master Plan of March 24, 2000.

SEC. 243. DESIGNATION OF SENIOR OFFICIAL FOR HIGH ENERGY LASER PROGRAMS.

(a) DESIGNATION.—The Secretary of Defense shall designate a single senior civilian official in the Office of the Secretary of Defense (in this subtitle referred to as the "designated official") to chair the High Energy Laser Technology Council called for in the master plan referred to in section 242 and to carry out responsibilities for the programs for which funds are provided under this subtitle. The designated official shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics for matters concerning the responsibilities specified in subsection (b).

(b) RESPONSIBILITIES.—The primary responsibilities of the designated official shall include the following:

(1) Establishment of priorities for the high energy laser programs of the military departments and the Defense Agencies.

(2) Coordination of high energy laser programs among the military departments and the Defense Agencies.

(3) Identification of promising high energy laser technologies for which funding should be a high priority for the Department of Defense and establishment of priority for funding among those technologies.

(4) Preparation, in coordination with the Secretaries of the military departments and the Directors of the Defense Agencies, of a detailed technology plan to develop and mature high energy laser technologies.

(5) Planning and programming appropriate to rapid evolution of high energy laser technology.

(6) Ensuring that high energy laser programs of each military department and the Defense Agencies are initiated and managed effectively and are complementary with programs managed by the other military departments and Defense Agencies and by the Office of the Secretary of Defense.

(7) Ensuring that the high energy laser programs of the military departments and the Defense Agencies comply with the requirements specified in subsection (c).

(c) COORDINATION AND FUNDING BALANCE.—In carrying out the responsibilities specified in subsection (b), the designated official shall ensure that—

(1) high energy laser programs of each military department and of the Defense Agencies are consistent with the priorities identified in the designated official's planning and programming activities;

(2) funding provided by the Office of the Secretary of Defense for high energy laser research and development complements high energy laser programs for which funds are provided by the military departments and the Defense Agencies;

(3) programs, projects, and activities to be carried out by the recipients of such funds are selected on the basis of appropriate competitive procedures or Department of Defense peer review process;

(4) beginning with fiscal year 2002, funding from the Office of the Secretary of Defense in applied research and advanced technology development program elements is not applied to technology efforts in support of high energy laser programs that are not funded by a military department or the Defense Agencies; and

(5) funding from the Office of the Secretary of Defense to complement an applied research or advanced technology development high energy laser program for which funds are provided by one of the military departments or the Defense Agencies do not exceed the amount provided by the military department or the Defense Agencies for that program.

SEC. 244. SITE FOR JOINT TECHNOLOGY OFFICE.

(a) DEADLINE FOR SELECTION OF SITE.—The Secretary of Defense shall locate the Joint Technology Office called for in the High

Energy Laser Master Plan referred to in section 242 at a location determined appropriate by the Secretary not later than 30 days after the date of the enactment of this Act.

(b) CONSIDERATION OF SITE.—In determining the location of the Joint Technology Office, the Secretary shall, in consultation with the Deputy Under Secretary of Defense for Science and Technology, assess—

(1) cost;

(2) accessibility between the Office and the Armed Forces and senior Department of Defense leaders; and

(3) the advantages and disadvantages of locating the Office at a site at which occurs a substantial proportion of the directed energy research, development, test, and evaluation activities of the Department of Defense.

SEC. 245. HIGH ENERGY LASER INFRASTRUCTURE IMPROVEMENTS.

(a) ENHANCEMENT OF INDUSTRIAL BASE.—The Secretary of Defense shall consider, evaluate, and undertake to the extent appropriate initiatives, including investment initiatives, to enhance the industrial base to support military applications of high energy laser technologies and systems.

(b) ENHANCEMENT OF TEST AND EVALUATION CAPABILITIES.—The Secretary of Defense shall consider modernizing the High Energy Laser Test Facility at White Sands Missile Range, New Mexico, in order to enhance the test and evaluation capabilities of the Department of Defense with respect to high energy laser weapons.

SEC. 246. COOPERATIVE PROGRAMS AND ACTIVITIES.

(a) MEMORANDUM OF AGREEMENT WITH NNSA.—(1) The Secretary of Defense and the Administrator for Nuclear Security of the Department of Energy shall enter into a memorandum of agreement to conduct joint research and development on military applications of high energy lasers.

(2) The projects pursued under the memorandum of agreement—

(A) shall be of mutual benefit to the national security programs of the Department of Defense and the National Nuclear Security Administration of the Department of Energy;

(B) shall be prioritized jointly by officials designated to do so by the Secretary of Defense and the Administrator; and

(C) shall be consistent with the technology plan prepared pursuant to section 243(b)(4) and the requirements identified in section 243(c).

(3) The costs of each project pursued under the memorandum of agreement shall be shared equally by the Department of Defense and the National Nuclear Security Administration.

(4) The memorandum of agreement shall provide for appropriate peer review of projects pursued under the memorandum of agreement.

(b) EVALUATION OF OTHER COOPERATIVE PROGRAMS AND ACTIVITIES.—The Secretary of Defense shall evaluate the feasibility and advisability of entering into cooperative programs or activities with other Federal agencies, institutions of higher education, and the private sector for the purpose of enhancing the programs,

projects, and activities of the Department of Defense relating to high energy laser technologies, systems, and weapons.

SEC. 247. TECHNOLOGY PLAN.

The designated official shall submit to the congressional defense committees by February 15, 2001, the technology plan prepared pursuant to section 243(b)(4). The report shall be submitted in unclassified and, if necessary, classified form.

SEC. 248. ANNUAL REPORT.

Not later than February 15 of 2001, 2002, and 2003, the Secretary of Defense shall submit to the congressional defense committees a report on the high energy laser programs of the Department of Defense. Each report shall include an assessment of the following:

(1) The adequacy of the management structure of the Department of Defense for the high energy laser programs.

(2) The funding available for the high energy laser programs.

(3) The technical progress achieved for the high energy laser programs.

(4) The extent to which goals and objectives of the high energy laser technology plan have been met.

SEC. 249. DEFINITION.

For purposes of this subtitle, the term "high energy laser" means a laser that has average power in excess of one kilowatt and that has potential weapons applications.

SEC. 250. REVIEW OF DEFENSE-WIDE DIRECTED ENERGY PROGRAMS.

(a) EVALUATION.—The Secretary of Defense, in consultation with the Deputy Under Secretary of Defense for Science and Technology, shall evaluate expansion of the High Energy Laser management structure specified in section 242 for possible inclusion in that management structure of science and technology programs in related areas, including the following:

(1) High power microwave technologies.

(2) Low energy and nonlethal laser technologies.

(3) Other directed energy technologies.

(b) CONSIDERATION OF PRIOR STUDY.—The evaluation under subsection (a) shall take into consideration the July 1999 Department of Defense study on streamlining and coordinating science and technology and research, development, test, and evaluation within the Department of Defense.

(c) REPORT.—The Secretary of Defense shall submit to the congressional defense committees a report on the findings of the evaluation under subsection (a). The report shall be submitted not later than March 15, 2001.

B. WAR AND NATIONAL DEFENSE

1. NATIONAL SECURITY ACT OF 1947

(Selected Provisions)

AN ACT To promote the national security by providing for the Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That [50 U.S.C. 401 note] this Act may be cited as the "National Security Act of 1947".

TABLE OF CONTENTS

Sec. 2. Declaration of policy.
Sec. 3. Definitions. [1]

TITLE I—COORDINATION FOR NATIONAL SECURITY

Sec. 101. National Security Council.
Sec. 102. Office of the Director of Central Intelligence.
Sec. 102A. Central Intelligence Agency.
Sec. 103. Responsibilities of the Director of Central Intelligence.
Sec. 104. Authorities of the Director of Central Intelligence.
Sec. 105. Responsibilities of the Secretary of Defense pertaining to the National Foreign Intelligence Program.
Sec. 105A. Assistance to United States law enforcement agencies.
Sec. 105B. Protection of operational files of the National Imagery and Mapping Agency.
Sec. 106. Appointment of officials responsible for intelligence-related activities.
Sec. 107. National Security Resources Board.
Sec. 108. Annual National Security Strategy Report.
Sec. 109. Annual report on intelligence.
Sec. 110. National mission of National Imagery and Mapping Agency.
Sec. 111. Collection tasking authority.
Sec. 112. Restrictions on intelligence sharing with the United Nations.
Sec. 113. Detail of intelligence community personnel—intelligence community assignment program.
Sec. 114. Additional annual reports from the Director of Central Intelligence.
Sec. 115. Limitation on establishment or operation of diplomatic intelligence support centers.
Sec. 116. Travel on any common carrier for certain intelligence collection personnel.
Sec. 117. POW/MIA analytic capability.

* * * * * * *

[1] The item relating to section 3 does not appear in the law.

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

Sec. 501. General congressional oversight provisions.
Sec. 502. Reporting of intelligence activities other than covert actions.
Sec. 503. Presidential approval and reporting of covert actions.
Sec. 504. Funding of intelligence activities.
Sec. 505. Notice to Congress of certain transfers of defense articles and defense services.

* * * * * * *

DECLARATION OF POLICY

SEC. 2. [50 U.S.C. 401] In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

DEFINITIONS

SEC. 3. [50 U.S.C. 401a] As used in this Act:

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons.

(3) The term "counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term "intelligence community" includes—

(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as

provided for in section 105(b)(3)), and such other offices as the Director may designate;

(B) the Central Intelligence Agency;

(C) the National Security Agency;

(D) the Defense Intelligence Agency;

(E) the National Imagery and Mapping Agency;

(F) the National Reconnaissance Office;

(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of Energy;

(I) the Bureau of Intelligence and Research of the Department of State; and

(J) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms "national intelligence" and "intelligence related to the national security"—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.

(6) The term "National Foreign Intelligence Program" refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

SEC. 101. [50 U.S.C. 402] (a) There is hereby established a council to be known as the National Security Council (thereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the mili-

tary services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of[1]—

(1) the President;

(2) the Vice President;

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the Director for Mutual Security;

(6) the Chairman of the National Security Resources Board; and

(7) The Secretaries and Under Secretaries of other executive departments and the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of $10,000 a year.[2] The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended,[3] to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

---

[1] The positions of Director for Mutual Security, Chairman of the National Security Resources Board, Chairman of the Munitions Board, and Chairman of the Research and Development Board have been abolished by various Reorganiztion Plans. The statutory members of the National Security Council are the President, Vice President, Secretary of State, and Secretary of Defense.

[2] The specification of the salary of the head of the National Security Council staff is obsolete and has been superseded.

[3] The Classification Act of 1923 was repealed by the Classification Act of 1949. The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89–544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and subchapter 53 of title 5. Section 7(b) of that Act (80 Stat. 631) provided: "A reference to a law replaced by sections 1–6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act."

(e) The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(g) The President shall establish with the National Security Council a board to be known as the "Board for Low Intensity Conflict". The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h)(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the "Committee").

(2) The Committee shall be composed of the following:

(A) The Director of Central Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

(A) identifying the intelligence required to address the national security interests of the United States as specified by the President;

(B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and

(C) establishing policies relating to the conduct of intelligence activities of the United States, including appropriate roles and missions for the elements of the intelligence community and appropriate targets of intelligence collection activities.

(4) In carrying out its function, the Committee shall—

(A) conduct an annual review of the national security interests of the United States;

(B) identify on an annual basis, and at such other times as the Council may require, the intelligence required to meet such interests and establish an order of priority for the collection and analysis of such intelligence; and

(C) conduct an annual review of the elements of the intelligence community in order to determine the success of such elements in collecting, analyzing, and disseminating the intelligence identified under subparagraph (B).

(5) The Committee shall submit each year to the Council and to the Director of Central Intelligence a comprehensive report on its activities during the preceding year, including its activities under paragraphs (3) and (4).

(i)(1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the "Committee").

(2) The Committee shall include the following members:

(A) The Director of Central Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Attorney General.

(E) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(F) Such other members as the President may designate.

(3) The function of the Committee shall be to coordinate and direct the activities of the United States Government relating to combatting transnational threats.

(4) In carrying out its function, the Committee shall—

(A) identify transnational threats;

(B) develop strategies to enable the United States Government to respond to transnational threats identified under subparagraph (A);

(C) monitor implementation of such strategies;

(D) make recommendations as to appropriate responses to specific transnational threats;

(E) assist in the resolution of operational and policy differences among Federal departments and agencies in their responses to transnational threats;

(F) develop policies and procedures to ensure the effective sharing of information about transnational threats among Federal departments and agencies, including law enforcement agencies and the elements of the intelligence community; and

(G) develop guidelines to enhance and improve the coordination of activities of Federal law enforcement agencies and elements of the intelligence community outside the United States with respect to transnational threats.

(5) For purposes of this subsection, the term "transnational threat" means the following:

(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States.

(B) Any individual or group that engages in an activity referred to in subparagraph (A).

(j) The Director of Central Intelligence (or, in the Director's absence, the Deputy Director of Central Intelligence) may, in the performance of the Director's duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(i)[1] It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on International Religious Freedom, whose position should be comparable to that of a director within the Executive Office of the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of violations of religious

[1] Section 301 of the International Religious Freedom Act of 1998 (Public Law 105–292; 112 Stat. 2800) added this subsection (i) at the end of section 101. By the time of the amendment, section 101 already had subsections (i) and (j).

freedom (as defined in section 3 of the International Religious Freedom Act of 1998), and making policy recommendations. The Special Adviser should serve as liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations.

OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 102. [50 U.S.C. 403] (a) DIRECTOR OF CENTRAL INTELLIGENCE.—There is a Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall—

(1) serve as head of the United States intelligence community;

(2) act as the principal adviser to the President for intelligence matters related to the national security; and

(3) serve as head of the Central Intelligence Agency.

(b) DEPUTY DIRECTORS OF CENTRAL INTELLIGENCE.—(1) There is a Deputy Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) There is a Deputy Director of Central Intelligence for Community Management who shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Each Deputy Director of Central Intelligence shall have extensive national security expertise.

(c) MILITARY STATUS OF DIRECTOR AND DEPUTY DIRECTORS.—(1)(A) Not more than one of the individuals serving in the positions specified in subparagraph (B) may be a commissioned officer of the Armed Forces, whether in active or retired status.

(B) The positions referred to in subparagraph (A) are the following:

(i) The Director of Central Intelligence.

(ii) The Deputy Director of Central Intelligence.

(iii) The Deputy Director of Central Intelligence for Community Management.

(2) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (1)(B)—

(A) be a commissioned officer of the Armed Forces, whether in active or retired status; or

(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

(3) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (1)(B)—

(A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

(B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

(C) 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.

(4) Except as provided in subparagraph (A) or (B) of paragraph (3), the appointment of an officer of the Armed Forces to a position specified in paragraph (1)(B) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, position, rank, or grade.

(5) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (1)(B), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director of Central Intelligence.

(d) DUTIES OF DEPUTY DIRECTORS.—(1)(A) The Deputy Director of Central Intelligence shall assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act.

(B) The Deputy Director of Central Intelligence shall act for, and exercise the powers of, the Director of Central Intelligence during the Director's absence or disability or during a vacancy in the position of the Director of Central Intelligence.

(2) The Deputy Director of Central Intelligence for Community Management shall, subject to the direction of the Director of Central Intelligence, be responsible for the following:

(A) Directing the operations of the Community Management Staff.

(B) Through the Assistant Director of Central Intelligence for Collection, ensuring the efficient and effective collection of national intelligence using technical means and human sources.

(C) Through the Assistant Director of Central Intelligence for Analysis and Production, conducting oversight of the analysis and production of intelligence by elements of the intelligence community.

(D) Through the Assistant Director of Central Intelligence for Administration, performing community-wide management functions of the intelligence community, including the management of personnel and resources.

(3)(A) The Deputy Director of Central Intelligence takes precedence in the Office of the Director of Central Intelligence immediately after the Director of Central Intelligence.

(B) The Deputy Director of Central Intelligence for Community Management takes precedence in the Office of the Director of Central Intelligence immediately after the Deputy Director of Central Intelligence.

(e) OFFICE OF THE DIRECTOR OF CENTRAL INTELLIGENCE.—(1) There is an Office of the Director of Central Intelligence. The function of the Office is to assist the Director of Central Intelligence in carrying out the duties and responsibilities of the Director under this Act and to carry out such other duties as may be prescribed by law.

(2) The Office of the Director of Central Intelligence is composed of the following:

(A) The Director of Central Intelligence.

(B) The Deputy Director of Central Intelligence.

(C) The Deputy Director of Central Intelligence for Community Management.

(D) The National Intelligence Council.

(E) The Assistant Director of Central Intelligence for Collection.

(F) The Assistant Director of Central Intelligence for Analysis and Production.

(G) The Assistant Director of Central Intelligence for Administration.

(H) Such other offices and officials as may be established by law or the Director of Central Intelligence may establish or designate in the Office.

(3) To assist the Director in fulfilling the responsibilities of the Director as head of the intelligence community, the Director shall employ and utilize in the Office of the Director of Central Intelligence a professional staff having an expertise in matters relating to such responsibilities and may establish permanent positions and appropriate rates of pay with respect to that staff.

(4) The Office of the Director of Central Intelligence shall, for administrative purposes, be within the Central Intelligence Agency.

(f) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR COLLECTION.—(1) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Collection who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Collection shall assist the Director of Central Intelligence in carrying out the Director's collection responsibilities in order to ensure the efficient and effective collection of national intelligence.

(g) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR ANALYSIS AND PRODUCTION.—(1) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Analysis and Production who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Analysis and Production shall—

(A) oversee the analysis and production of intelligence by the elements of the intelligence community;

(B) establish standards and priorities relating to such analysis and production;

(C) monitor the allocation of resources for the analysis and production of intelligence in order to identify unnecessary duplication in the analysis and production of intelligence;

(D) direct competitive analysis of analytical products having National importance;

(E) identify intelligence to be collected for purposes of the Assistant Director of Central Intelligence for Collection; and

(F) provide such additional analysis and production of intelligence as the President and the National Security Council may require.

(h) ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR ADMINISTRATION.—(1) To assist the Director of Central Intelligence

in carrying out the Director's responsibilities under this Act, there shall be an Assistant Director of Central Intelligence for Administration who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Assistant Director for Administration shall manage such activities relating to the administration of the intelligence community as the Director of Central Intelligence shall require.

CENTRAL INTELLIGENCE AGENCY

SEC. 102A. [50 U.S.C. 403–1] There is a Central Intelligence Agency. The function of the Agency shall be to assist the Director of Central Intelligence in carrying out the responsibilities referred to in paragraphs (1) through (5) of section 103(d) of this Act.

RESPONSIBILITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 103. [50 U.S.C. 403–3] (a) PROVISION OF INTELLIGENCE.—(1) Under the direction of the National Security Council, the Director of Central Intelligence shall be responsible for providing national intelligence—

(A) to the President;

(B) to the heads of departments and agencies of the executive branch;

(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders; and

(D) where appropriate, to the Senate and House of Representatives and the committees thereof.

(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

(b) NATIONAL INTELLIGENCE COUNCIL.—(1)(A) There is established within the Office of the Director of Central Intelligence the National Intelligence Council (hereafter in this section referred to as the "Council"). The Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of Central Intelligence.

(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(2) The Council shall—

(A) produce national intelligence estimates for the Government, including, whenever the Council considers appropriate, alternative views held by elements of the intelligence community;

(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production;

(C) otherwise assist the Director in carrying out the responsibilities described in subsection (a).

(3) Within their respective areas of expertise and under the direction of the Director, the members of the Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the Government.

(4) Subject to the direction and control of the Director of Central Intelligence, the Council may carry out its responsibilities under this subsection by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this subsection.

(5) The Director shall make available to the Council such staff as may be necessary to permit the Council to carry out its responsibilities under this subsection and shall take appropriate measures to ensure that the Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence. The Council shall also be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

(6) The heads of elements within the intelligence community shall, as appropriate, furnish such support to the Council, including the preparation of intelligence analyses, as may be required by the Director.

(c) HEAD OF THE INTELLIGENCE COMMUNITY.—In the Director's capacity as head of the intelligence community, the Director shall—

(1) facilitate the development of an annual budget for intelligence and intelligence-related activities of the United States by—

(A) developing and presenting to the President an annual budget for the National Foreign Intelligence Program; and

(B) participating in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and the Tactical Intelligence and Related Activities Program;

(2) establish the requirements and priorities to govern the collection of national intelligence by elements of the intelligence community;

(3) approve collection requirements, determine collection priorities, and resolve conflicts in collection priorities levied on national collection assets, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President;

(4) promote and evaluate the utility of national intelligence to consumers within the Government;

(5) eliminate waste and unnecessary duplication within the intelligence community;

(6) protect intelligence sources and methods from unauthorized disclosure; and

(7) perform such other functions as the President or the National Security Council may direct.

(d) HEAD OF THE CENTRAL INTELLIGENCE AGENCY.—In the Director's capacity as head of the Central Intelligence Agency, the Director shall—

(1) collect intelligence through human sources and by other appropriate means, except that the Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

(2) provide overall direction for the collection of national intelligence through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

(3) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the Director of Central Intelligence determines can be more efficiently accomplished centrally; and

(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.

AUTHORITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 104. [50 U.S.C. 403–4] (a) ACCESS TO INTELLIGENCE.—To the extent recommended by the National Security Council and approved by the President, the Director of Central Intelligence shall have access to all intelligence related to the national security which is collected by any department, agency, or other entity of the United States.

(b) APPROVAL OF BUDGETS.—The Director of Central Intelligence shall provide guidance to elements of the intelligence community for the preparation of their annual budgets and shall approve such budgets before their incorporation in the National Foreign Intelligence Program.

(c) ROLE OF DCI IN REPROGRAMMING.—No funds made available under the National Foreign Intelligence Program may be reprogrammed by any element of the intelligence community without the prior approval of the Director of Central Intelligence except in accordance with procedures issued by the Director. The Secretary of Defense shall consult with the Director of Central Intelligence before reprogramming funds made available under the Joint Military Intelligence Program.

(d) TRANSFER OF FUNDS OR PERSONNEL WITHIN THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—(1)(A) In addition to any other authorities available under law for such purposes, the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the National Foreign Intelligence Program to another such program and, in accordance with procedures to be developed by the Director and the heads of affected departments and agencies, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to a year.

(B) The Director may only delegate any duty or authority given the Director under this subsection to the Deputy Director of Central Intelligence for Community Management.

(2)(A) A transfer of funds or personnel may be made under this subsection only if—

(i) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(ii) the need for funds or personnel for such activity is based on unforeseen requirements;

(iii) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

(iv) the transfer does not involve a transfer of funds or personnel from the Federal Bureau of Investigation; and

(v) subject to subparagraph (B), the Secretary or head of the department which contains the affected element or elements of the intelligence community does not object to such transfer.

(B)(i) Except as provided in clause (ii), the authority to object to a transfer under subparagraph (A)(v) may not be delegated by the Secretary or head of the department involved.

(ii) With respect to the Department of Defense, the authority to object to such a transfer may be delegated by the Secretary of Defense, but only to the Deputy Secretary of Defense.

(iii) An objection to a transfer under subparagraph (A)(v) shall have no effect unless submitted to the Director of Central Intelligence in writing.

(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this section.

(5) The Director shall promptly submit to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in the case of the transfer of personnel to or from the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(e) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Security Council and in a manner con-

sistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(f) USE OF PERSONNEL.—The Director shall, in coordination with the heads of departments and agencies with elements in the intelligence community, institute policies and programs within the intelligence community—

(1) to provide for the rotation of personnel between the elements of the intelligence community, where appropriate, and to make such rotated service a factor to be considered for promotion to senior positions; and

(2) to consolidate, wherever possible, personnel, administrative, and security programs to reduce the overall costs of these activities within the intelligence community.

(g) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—Notwithstanding the provisions of any other law, the Director may, in the Director's discretion, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director shall deem such termination necessary or advisable in the interests of the United States. Any such termination shall not affect the right of the officer or employee terminated to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the Office of Personnel Management.

RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM

SEC. 105. [50 U.S.C. 403–5] (a) IN GENERAL.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director of Central Intelligence by elements of the Department of Defense within the National Foreign Intelligence Program;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Foreign Intelligence Program;

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;

(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

(b) RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 103 and 104 of this Act, the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through the National Imagery and Mapping Agency (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense—

(A) for carrying out tasking of imagery collection;

(B) for the coordination of imagery processing and exploitation activities;

(C) for ensuring the dissemination of imagery in a timely manner to authorized recipients; and

(D) notwithstanding any other provision of law, for—

(i) prescribing technical architecture and standards related to imagery intelligence and geospatial information and ensuring compliance with such architecture and standards; and

(ii) developing and fielding systems of common concern related to imagery intelligence and geospatial information;

(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches; and

(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of Central Intelligence;

(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

(C) the requirements of the unified and specified combatant commands and of joint operations; and

(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

(c) USE OF ELEMENTS OF DEPARTMENT OF DEFENSE.—The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

(d) ANNUAL EVALUATION OF THE DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of Central Intelligence, in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, shall submit each year to the Committee on Foreign Intelligence of the National Security Council and the appropriate congressional committees (as defined in section 109(c) of this Act) an evaluation of the performance and the responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their national missions.

ASSISTANCE TO UNITED STATES LAW ENFORCEMENT AGENCIES

SEC. 105A. [50 U.S.C. 403–5a] (a) AUTHORITY TO PROVIDE ASSISTANCE.—Subject to subsection (b), elements of the intelligence community may, upon the request of a United States law enforcement agency, collect information outside the United States about individuals who are not United States persons. Such elements may collect such information notwithstanding that the law enforcement agency intends to use the information collected for purposes of a law enforcement investigation or counterintelligence investigation.

(b) LIMITATION ON ASSISTANCE BY ELEMENTS OF DEPARTMENT OF DEFENSE.—(1) With respect to elements within the Department of Defense, the authority in subsection (a) applies only to the following:

(A) The National Security Agency.

(B) The National Reconnaissance Office.

(C) The National Imagery and Mapping Agency.

(D) The Defense Intelligence Agency.

(2) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(3) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(4) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

(c) DEFINITIONS.—For purposes of subsection (a):

(1) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term "United States person" means the following:

(A) A United States citizen.

(B) An alien known by the intelligence agency concerned to be a permanent resident alien.

(C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.

(D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

PROTECTION OF OPERATIONAL FILES OF THE NATIONAL IMAGERY AND MAPPING AGENCY

SEC. 105B. [50 U.S.C. 403–5b] (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Imagery and Mapping Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Imagery and Mapping Agency from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

(2)(A) Subject to subparagraph (B), for the purposes of this section, the term "operational files" means files of the National Imagery and Mapping Agency (hereafter in this section referred to as "NIMA") concerning the activities of NIMA that before the establishment of NIMA were performed by the National Photographic Interpretation Center of the Central Intelligence Agency (NPIC), that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(B) Files which are the sole repository of disseminated intelligence are not operational files.

(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(i) The Permanent Select Committee on Intelligence of the House of Representatives.

(ii) The Select Committee on Intelligence of the Senate.

(iii) The Intelligence Oversight Board.
(iv) The Department of Justice.
(v) The Office of General Counsel of NIMA.
(vi) The Office of the Director of NIMA.

(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

(C) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section, and which specifically cites and repeals or modifies its provisions.

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NIMA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NIMA, such information shall be examined ex parte, in camera by the court.

(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NIMA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

(II) The court may not order NIMA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NIMA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(vi) If the court finds under this paragraph that NIMA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NIMA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NIMA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Imagery and Mapping Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NIMA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

(A) Whether NIMA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of this section or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether NIMA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

APPOINTMENT OF OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES

SEC. 106. [50 U.S.C. 403–6] (a) CONCURRENCE OF DCI IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the Secretary of Defense shall obtain the

concurrence of the Director of Central Intelligence before recommending to the President an individual for appointment to the position. 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.

(b) CONSULTATION WITH DCI IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the Director of Central Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the Defense Intelligence Agency.

(B) The Assistant Secretary of State for Intelligence and Research.

(C) The Director of the Office of Nonproliferation and National Security of the Department of Energy.

(3) In the event of a vacancy in the position of the Assistant Director, National Security Division of the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation shall provide timely notice to the Director of Central Intelligence of the recommendation of the Director of the Federal Bureau of Investigation of an individual to fill the position in order that the Director of Central Intelligence may consult with the Director of the Federal Bureau of Investigation before the Attorney General appoints an individual to fill the vacancy.

NATIONAL SECURITY RESOURCES BOARD [1]

SEC. 107. [50 U.S.C. 404] (a) The Director of the Office of Defense Mobilization,[2] subject to the direction of the President, is authorized, subject to the civil-service laws and the Classification Act of 1949,[3] to appoint and fix the compensation of such personnel as may be necessary to assist the Director in carrying out his functions.

(b) It shall be the function of the Director of the Office of Defense Mobilization to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

---

[1] Section 107 deals with emergency preparedness. Section 50 of the Act of September 3, 1954 (68 Stat. 1244), eliminated former subsection (a), relating to the establishment of the National Security Resources Board, and redesignated former subsections (b)–(d) as subsections (a)–(c). The section heading was not amended accordingly.

[2] The functions of the Director of the Office of Defense Mobilization under this section which previously were transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4–102 of Executive Order No. 12148 (July 20, 1979, 44 F.R. 43239, 50 U.S.C. App. 2251 note).

[3] The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89–544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and subchapter 53 of that title.

(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war.

(2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves; [1]

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security.

(c) In performing his functions, the Director of the Office of Defense Mobilization shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

ANNUAL NATIONAL SECURITY STRATEGY REPORT

SEC. 108. [50 U.S.C. 404a] (a)(1) The President shall transmit to Congress each year a comprehensive report on the national security strategy of the United States (hereinafter in this section referred to as a "national security strategy report").

(2) The national security strategy report for any year shall be transmitted on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31, United States Code.

(3) Not later than 150 days after the date on which a new President takes office, the President shall transmit to Congress a national security strategy report under this section. That report shall be in addition to the report for that year transmitted at the time specified in paragraph (2).

(b) Each national security strategy report shall set forth the national security strategy of the United States and shall include a comprehensive description and discussion of the following:

(1) The worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States.

(2) The foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States.

(3) The proposed short-term and long-term uses of the political, economic, military, and other elements of the national

[1] Paragraph (5) probably should end with "and".

power of the United States to protect or promote the interests and achieve the goals and objectives referred to in paragraph (1).

(4) The adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy.

(5) Such other information as may be necessary to help inform Congress on matters relating to the national security strategy of the United States.

(c) Each national security strategy report shall be transmitted in both a classified and an unclassified form.

ANNUAL REPORT ON INTELLIGENCE

SEC. 109. [50 U.S.C. 404d] (a) IN GENERAL.—(1) Not later than January 31 each year, the President shall submit to the appropriate congressional committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

(2) The purpose of the report is to facilitate an assessment of the activities of the intelligence community during the preceding fiscal year and to assist in the development of a mission and a budget for the intelligence community for the fiscal year beginning in the year in which the report is submitted.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

(b) MATTERS COVERED.—(1) Each report under subsection (a) shall—

(A) specify the intelligence required to meet the national security interests of the United States, and set forth an order of priority for the collection and analysis of intelligence required to meet such interests, for the fiscal year beginning in the year in which the report is submitted; and

(B) evaluate the performance of the intelligence community in collecting and analyzing intelligence required to meet such interests during the fiscal year ending in the year preceding the year in which the report is submitted, including a description of the significant successes and significant failures of the intelligence community in such collection and analysis during that fiscal year.

(2) The report shall specify matters under paragraph (1)(A) in sufficient detail to assist Congress in making decisions with respect to the allocation of resources for the matters specified.

(c) DEFINITION.—In this section, the term "appropriate congressional committees" means the following:

(1) The Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Armed Services of the Senate.

(2) The Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Armed Services of the House of Representatives.

(c)[1] TIME FOR SUBMISSION.—The report under this section for any year shall be submitted at the same time that the President submits the budget for the next fiscal year pursuant to section 1105 of title 31, United States Code.

NATIONAL MISSION OF NATIONAL IMAGERY AND MAPPING AGENCY

SEC. 110. [50 U.S.C. 404e] (a) IN GENERAL.—In addition to the Department of Defense missions set forth in section 442 of title 10, United States Code, the National Imagery and Mapping Agency shall support the imagery requirements of the Department of State and other departments and agencies of the United States outside the Department of Defense.

(b) REQUIREMENTS AND PRIORITIES.—The Director of Central Intelligence shall establish requirements and priorities governing the collection of national intelligence by the National Imagery and Mapping Agency under subsection (a).

(c) CORRECTION OF DEFICIENCIES.—The Director of Central Intelligence shall develop and implement such programs and policies as the Director and the Secretary of Defense jointly determine necessary to review and correct deficiencies identified in the capabilities of the National Imagery and Mapping Agency to accomplish assigned national missions, including support to the all-source analysis and production process. The Director shall consult with the Secretary of Defense on the development and implementation of such programs and policies. The Secretary shall obtain the advice of the Chairman of the Joint Chiefs of Staff regarding the matters on which the Director and the Secretary are to consult under the preceding sentence.

COLLECTION TASKING AUTHORITY

SEC. 111. [50 U.S.C. 404f] 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.

RESTRICTIONS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS

SEC. 112. [50 U.S.C. 404g] (a) PROVISION OF INTELLIGENCE INFORMATION TO THE UNITED NATIONS.—(1) No United States intelligence information may be provided to the United Nations or any organization affiliated with the United Nations, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the Director of Central Intelligence, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the United Nations to ensure implementation of procedures, for protecting from unauthorized disclosure United

[1] The law contains two subsections designated as (c).

States intelligence sources and methods connected to such information.

(2) Paragraph (1) may be waived upon written certification by the President to the appropriate committees of Congress that providing such information to the United Nations or an organization affiliated with the United Nations, or to any officials or employees thereof, is in the national security interests of the United States.

(b) PERIODIC AND SPECIAL REPORTS.—(1) The President shall report semiannually to the appropriate committees of Congress on the types and volume of intelligence provided to the United Nations and the purposes for which it was provided during the period covered by the report. The President shall also report to the appropriate committees of Congress within 15 days after it has become known to the United States Government that there has been an unauthorized disclosure of intelligence provided by the United States to the United Nations.

(2) The requirement for periodic reports under the first sentence of paragraph (1) shall not apply to the provision of intelligence that is provided only to, and for the use of, appropriately cleared United States Government personnel serving with the United Nations.

(c) DELEGATION OF DUTIES.—The President may not delegate or assign the duties of the President under this section.

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall be construed to—

(1) impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(6) of this Act; or

(2) supersede or otherwise affect the provisions of title V of this Act.

(e) DEFINITION.—As used in this section, the term "appropriate committees of Congress" means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

DETAIL OF INTELLIGENCE COMMUNITY PERSONNEL—INTELLIGENCE COMMUNITY ASSIGNMENT PROGRAM

SEC. 113. [50 U.S.C. 404h] (a) DETAIL.—(1) Notwithstanding any other provision of law, the head of a department with an element in the intelligence community or the head of an intelligence community agency or element may detail any employee within that department, agency, or element to serve in any position in the Intelligence Community Assignment Program on a reimbursable or a nonreimbursable basis.

(2) Nonreimbursable details may be for such periods as are agreed to between the heads of the parent and host agencies, up to a maximum of three years, except that such details may be extended for a period not to exceed one year when the heads of the parent and host agencies determine that such extension is in the public interest.

(b) BENEFITS, ALLOWANCES, TRAVEL, INCENTIVES.—An employee detailed under subsection (a) may be authorized any benefit,

allowance, travel, or incentive otherwise provided to enhance staffing by the organization from which the employee is detailed.

(c) ANNUAL REPORT.—Not later than March 1, 1999, and annually thereafter, the Director of Central Intelligence shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report describing the detail of intelligence community personnel pursuant to subsection (a) during the 12-month period ending on the date of the report. The report shall set forth the number of personnel detailed, the identity of parent and host agencies or elements, and an analysis of the benefits of the details.

ADDITIONAL ANNUAL REPORTS FROM THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 114. [50 U.S.C. 404i] (a) REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH FEDERAL LAW ENFORCEMENT AGENCIES.—(1) Not later than December 31 of each year, the Director of Central Intelligence shall submit to the congressional intelligence committees and the congressional leadership a report describing the nature and extent of cooperation and assistance provided by the intelligence community to Federal law enforcement agencies with respect to efforts to stop the illegal importation into the United States of controlled substances (as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) that are included in schedule I or II under part B of such Act.

(2) Each such report shall include a discussion of the following:

(A) Illegal importation of such controlled substances through transit zones such as the Caribbean Sea and across the Southwest and northern borders of the United States.

(B) Methodologies used for such illegal importation.

(C) Additional routes used for such illegal importation.

(D) Quantities of such controlled substances transported through each route.

(3) Each such report may be prepared in classified form, unclassified form, or unclassified form with a classified annex.

(b) ANNUAL REPORT ON THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND NUCLEAR MILITARY FORCES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to the congressional intelligence committees and the congressional leadership an intelligence report assessing the safety and security of the nuclear facilities and nuclear military forces in Russia.

(2) Each such report shall include a discussion of the following:

(A) The ability of the Government of Russia to maintain its nuclear military forces.

(B) The security arrangements at civilian and military nuclear facilities in Russia.

(C) The reliability of controls and safety systems at civilian nuclear facilities in Russia.

(D) The reliability of command and control systems and procedures of the nuclear military forces in Russia.

(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

(c) DEFINITIONS.—In this section:

(1) The term "congressional intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term "congressional leadership" means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.

LIMITATION ON ESTABLISHMENT OR OPERATION OF DIPLOMATIC INTELLIGENCE SUPPORT CENTERS

SEC. 115. [50 U.S.C. 404j] (a) IN GENERAL.—(1) A diplomatic intelligence support center may not be established, operated, or maintained without the prior approval of the Director of Central Intelligence.

(2) The Director may only approve the establishment, operation, or maintenance of a diplomatic intelligence support center if the Director determines that the establishment, operation, or maintenance of such center is required to provide necessary intelligence support in furtherance of the national security interests of the United States.

(b) PROHIBITION OF USE OF APPROPRIATIONS.—Amounts appropriated pursuant to authorizations by law for intelligence and intelligence-related activities may not be obligated or expended for the establishment, operation, or maintenance of a diplomatic intelligence support center that is not approved by the Director of Central Intelligence.

(c) DEFINITIONS.—In this section:

(1) The term "diplomatic intelligence support center" means an entity to which employees of the various elements of the intelligence community (as defined in section 3(4)) are detailed for the purpose of providing analytical intelligence support that—

(A) consists of intelligence analyses on military or political matters and expertise to conduct limited assessments and dynamic taskings for a chief of mission; and

(B) is not intelligence support traditionally provided to a chief of mission by the Director of Central Intelligence.

(2) The term "chief of mission" has the meaning given that term by section 102(3) of the Foreign Service Act of 1980 (22 U.S.C. 3902(3)), and includes ambassadors at large and ministers of diplomatic missions of the United States, or persons appointed to lead United States offices abroad designated by the Secretary of State as diplomatic in nature.

(d) TERMINATION.—This section shall cease to be effective on October 1, 2000.

TRAVEL ON ANY COMMON CARRIER FOR CERTAIN INTELLIGENCE COLLECTION PERSONNEL

SEC. 116. [50 U.S.C. 404k] (a) IN GENERAL.—Notwithstanding any other provision of law, the Director of Central Intelligence may authorize travel on any common carrier when such travel, in the discretion of the Director—

(1) is consistent with intelligence community mission requirements, or

(2) is required for cover purposes, operational needs, or other exceptional circumstances necessary for the successful performance of an intelligence community mission.

(b) AUTHORIZED DELEGATION OF DUTY.—The Director may only delegate the authority granted by this section to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency the Director may delegate such authority to the Deputy Director for Operations.

POW/MIA ANALYTIC CAPABILITY

SEC. 117. [50 U.S.C. 404l] (a) REQUIREMENT.—(1) The Director of Central Intelligence shall, in consultation with the Secretary of Defense, establish and maintain in the intelligence community an analytic capability with responsibility for intelligence in support of the activities of the United States relating to individuals who, after December 31, 1990, are unaccounted for United States personnel.

(2) The analytic capability maintained under paragraph (1) shall be known as the "POW/MIA analytic capability of the intelligence community".

(b) UNACCOUNTED FOR UNITED STATES PERSONNEL.—In this section, the term "unaccounted for United States personnel" means the following:

(1) Any missing person (as that term is defined in section 1513(1) of title 10, United States Code).

(2) Any United States national who was killed while engaged in activities on behalf of the United States and whose remains have not been repatriated to the United States.

* * * * * * *

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

GENERAL CONGRESSIONAL OVERSIGHT PROVISIONS

SEC. 501. [50 U.S.C. 413] (a)(1) The President shall ensure that the intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.

(2) As used in this title, 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.

(3) Nothing in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) The President shall ensure that any illegal intelligence activity is reported promptly to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.

(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the intelligence committees or to Members of Congress under this title. Such procedures shall be established in consultation with the Director of Central Intelligence. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(f) As used in this section, the term "intelligence activities" includes covert actions as defined in section 503(e).

REPORTING OF INTELLIGENCE ACTIVITIES OTHER THAN COVERT ACTIONS

SEC. 502. [50 U.S.C. 413a] To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e)), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

SEC. 503. [50 U.S.C. 413b] (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be

set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the intelligence committees any information or material concerning covert actions which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee. When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) The President shall ensure that the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2), are notified of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

(e) As used in this title, the term "covert action" means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

FUNDING OF INTELLIGENCE ACTIVITIES

SEC. 504. [50 U.S.C. 414] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 503 of this Act concerning any significant

anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the need for funds for such activity is based on unforseen requirements; and

(C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by subsection (a) of section 503 has been signed or otherwise issued in accordance with that subsection.

(d)(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the intelligence committees and, as appropriate, the Director of Central Intelligence or the Secretary of Defense.

(e) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the term "appropriate congressional committees" means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term "specifically authorized by the Congress" means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be

specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 505. [50 U.S.C. 415] (a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this title.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(a) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term "transfer" means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term "value" means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or

other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

* * * * * * *

2. WAR POWERS RESOLUTION

(Public Law 93–148; enacted Nov. 7, 1973)

JOINT RESOLUTION Concerning the war powers of Congress and the President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

SEC. 2. [50 U.S.C. 1541] (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

SEC. 3. [50 U.S.C. 1542] The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

SEC. 4. [50 U.S.C. 1543] (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace of waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

SEC. 5. [50 U.S.C. 1544] (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is

earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

SEC. 6. [50 U.S.C. 1545] (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calender days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report on such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Nothwithstanding any rule in either House concerning the printing of conference re-

ports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

SEC. 7. [50 U.S.C. 1546] (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. [50 U.S.C. 1547] (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provisions contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

SEC. 9. [50 U.S.C. 1548] If any provision of this joint resolution or the application thereof to any person or circumstances is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment [Nov. 7, 1973].

3. NATIONAL EMERGENCIES ACT

(Public Law 94–412, approved Sept. 14, 1976)

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. [50 U.S.C. 1601] (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of the enactment of this Act [September 14, 1976] are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. [50 U.S.C. 1621] (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. [50 U.S.C. 1622] (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c)(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which man-

agers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. [50 U.S.C. 1631] When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401. [50 U.S.C. 1641] (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted

to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declarations, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

* * * * * * *

SEC. 502. [50 U.S.C. 1651] (a) The provision of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) * * * [Repealed—1977]

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

4. MILITARY SELECTIVE SERVICE ACT

(50 U.S.C. App. 451 et seq. Headings in brackets [ ] are not part of the Act but have been included for the convenience of the reader)

TITLE I [—MILITARY SELECTIVE SERVICE]

[SHORT TITLE; POLICY AND INTENT OF CONGRESS]

SECTION 1. [50 U.S.C. App. 451] (a) This Act may be cited as the "Military Selective Service Act."

(b) The Congress hereby declares that an adequate armed strength must be achieved and maintained to insure the security of this Nation.

(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.

(d) The Congress further declares, in accordance with our traditional military policy as expressed in the National Defense Act of 1916, as amended, [1] that it is essential that the strength and organization of the National Guard, both Ground and Air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the Regular components of the Ground Forces and the Air Forces, and those in active service under this title, the National Guard of the United States, both Ground and Air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal service and continued therein so long as such necessity exists.

(e) The Congress further declares that adequate provision for national security requires maximum effort in the fields of scientific research and development, and the fullest possible utilization of the Nation's technological, scientific, and other critical manpower resources.

(f) The Congress further declares that the Selective Service System should remain administratively independent of any other agency, including the Department of Defense.

SEC. 2. [Repealed by section 53 of the Act of August 10, 1956 (70A Stat. 678)]

---

[1] The National Defense Act of 1916 was repealed by section 53 of the Act of August 10, 1956 (70A Stat. 678).

[REGISTRATION]

SEC. 3. (a) [50 U.S.C. App. 453] Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder. The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status in the United States. [1]

(b) Regulations prescribed pursuant to subsection (a) may require that persons presenting themselves for and submitting to registration under this section provide, as part of such registration, such identifying information (including date of birth, address, and social security account number) as such regulations may prescribe.

TRAINING AND SERVICE

[Training and Service in General]

SEC. 4. [50 U.S.C. App. 454] (a) Except as otherwise provided in this title, every person required to register pursuant to section 3 of this title who is between the ages of eighteen years and six months and twenty-six years, at the time fixed for his registration, or who attains the age of eighteen years and six months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6(h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided,* That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: *Provided further,* That, notwithstanding any other provision of law, any registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted. The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces of the United States for training and service in the manner provided in this title (including but not limited to selection and induction by age group or age groups) such number of persons as may be required to provide and maintain the strength of the Armed Forces.

At such time as the period of active service in the Armed Forces required under this title of persons who have not attained the nineteenth anniversary of the day of their birth has been re-

[1] The text of Presidential Proclamation 4771 providing for registration under this section, dated July 2, 1980, follows this Act.

duced or eliminated pursuant to the provisions of section 4(k) of this title, and except as otherwise provided in this title, every person who is required to register under this title and who has not attained the nineteenth anniversary of the day of his birth on the date such period of active service is reduced or eliminated or who is otherwise liable as provided in section 6(h) of this title, shall be liable for training in the National Security Training Corps: *Provided,* That persons deferred under the provisions of section 6 of this title shall not be relieved for liability for induction into the National Security Training Corps solely by reason of having exceeded the age of nineteen years during the period of such deferment. The President is authorized, from time to time, whether or not a state of war exists, to select and induct for training in the National Security Training Corps as hereinafter provided such number of persons as may be required to further the purposes of this title.

No persons shall be inducted into the Armed Forces for training and service or shall be inducted for training in the National Security Training Corps under this title until his acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense: *Provided,* That the minimum standards for physical acceptability established pursuant to this subsection shall not be higher than those applied to persons inducted between the ages of 18 and 26 in January 1945: *Provided further,* That the passing requirement for the Armed Forces Qualification Test shall be fixed at a percentile score of 10 points: *And provided further,* That except in time of war or national emergency declared by the Congress the standards and requirements fixed by the preceding two provisos may be modified by the President under such rules and regulations as he may prescribe.

No persons shall be inducted for such training and service until adequate provision shall have been made for such shelter, sanitary facilities, water supplies, heating and lighting arrangements, medical care, and hospital accommodations for such persons as may be determined by the Secretary of Defense or the Secretary of Transportation to be essential to the public and personal health.

The persons inducted into the Armed Forces for training and service under this title shall be assigned to stations or units of such forces. Persons inducted into the land forces of the United States pursuant to this title shall be deemed to be members of the Army of the United States; persons inducted into the naval forces of the United States pursuant to this title shall be deemed to be members of the United States Navy or United States Marine Corps or the United States Coast Guard, as appropriate; and persons inducted into the air forces of the United States pursuant to this title shall be deemed to be members of the Air Force of the United States.

Every person inducted into the Armed Forces pursuant to the authority of this subsection after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act shall, following his induction, be given full and adequate military training for service in the armed force into which he is inducted for a period of not less than twelve weeks, and no such person shall, during this twelve weeks period, be assigned for duty at any installation located on land outside the United States, its Territories and

possessions (including the Canal Zone): *Provided,* That no funds appropriated by the Congress shall be used for the purpose of transporting or maintaining in violation of the provisions of this paragraph any person inducted into, or enlisted, appointed, or ordered to active duty in, the Armed Forces under the provisions of this title.

No [1] person, without his consent, shall be inducted for training and service in the Armed Forces or for training in the National Security Training Corps under this title, except as otherwise provided herein, after he has attained the twenty-sixth anniversary of the day of his birth.

[Length of Service]

(b) Each person inducted into the Armed Forces under the provisions of subsection (a) of this section shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred, or discharged in accordance with procedures prescribed by the Secretary of Defense (or the Secretary of Transportation with respect to the United States Coast Guard) or as otherwise prescribed by subsection (d) of section 4 of this title. The Secretaries of the Army, Navy, and Air Force, with the approval of the Secretary of Defense (and the Secretary of Transportation with respect to the United States Coast Guard), may provide, by regulations which shall be as nearly uniform as practicable, for the release from training and service in the armed forces prior to serving the periods required by this subsection of individuals who volunteered for and are accepted into organized units of the Army National Guard and Air National Guard and other reserve compoments.

[Enlistment; Reservists' Active Duty; Volunteers for Inductions; N.S.T.C.]

(c)(1) Under the provisions of applicable laws and regulations any person between the ages of eighteen years and six months and twenty-six years shall be offered an opportunity to enlist in the regular army for a period of service equal to that prescribed in subsection (b) of this section: *Provided,* That, notwithstanding the provisions of this or any other Act, any person so enlisting shall not have his enlistment extended without his consent until after a declaration of war or national emergency by the Congress after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act.

(2) Any enlisted member of any reserve component of the Armed Forces may, during the effective period of this Act, apply for a period of service equal to that prescribed in subsection (b) of this section and his application shall be accepted: *Provided,* That his services can be effectively utilized and that his physical and mental fitness for such service meet the standards prescribed by the head of the department concerned: *Provided further,* That active service performed pursuant to this section shall not prejudice his status as

[1] Former undesignated paragraph preceding this paragraph terminated as of July 1, 1973, pursuant to section 9 of Public Law 85–62, June 27, 1957 (71 Stat. 208), as last amended by section 103 of Public Law 92–129, September 28, 1971 (85 Stat. 355).

such member of such reserve component: *And provided further,* That any person who was a member of a reserve component on June 25, 1950, and who thereafter continued to serve satisfactorily in such reserve component, shall, if his application for active duty made pursuant to this paragraph is denied, be deferred from induction under this title until such time as he is ordered to active duty or ceases to serve satisfactorily in such reserve component.

(3) Within the limits of the quota determined under section 5(b) for the subdivision in which he resides, any person, between the ages of eighteen and twenty-six, shall be afforded an opportunity to volunteer for induction into the Armed Forces of the United States for the training and service prescribed in subsection (b), but no person who so volunteers shall be inducted for such training and service so long as he is deferred after classification.

(4) Within the limits of the quota determined under section 5(b) for the subdivision in which he resides, any person after attaining the age of seventeen shall with the written consent of his parents or guardian be afforded an opportunity to volunteer for induction into the Armed Forces of the United States for the training and service prescribed in subsection (b).

(5) Within the limits of the quota determined under section 5(b) for the subdivision in which he resides, at such time as induction into the National Security Training Corps is authorized pursuant to the provisions of this title, any person after attaining the age of seventeen shall with the written consent of his parents or guardian be afforded an opportunity to volunteer for induction into the National Security Training Corps for the training prescribed in subsection (k) of section 4 of this title.

[Transfer to Reserve Component; Period of Service]

(d)(1) Each person who hereafter and prior to the enactment of the 1951 Amendments to the Universal Training and Service Act is inducted, enlisted, or appointed and serves for a period of less than three years in one of the armed forces and meets the qualifications for enlistment or appointment in a reserve component of the armed force in which he serves, shall be transferred to a reserve component of such armed force, and until the expiration of a period of five years after such transfer, or until he is discharged from such reserve component, whichever occurs first, shall be deemed to be a member of such reserve component and shall be subject to such additional training and service as may now or hereafter be prescribed by law for such reserve component: *Provided,* That any such person who completes at least twenty-one months of service in the armed forces and who thereafter serves satisfactorily (1) on active duty in the armed forces under a voluntary extension for a period of at least one year, which extension is hereby authorized, or (2) in an organized unit of any reserve component of any of the armed forces for a period of at least thirty-six consecutive months, shall except in time of war or national emergency declared by the Congress, be relieved from any further liability under this subsection to serve in any reserve component of the armed forces of the United States, but nothing in this subsection shall be construed to prevent any such person, while in a

reserve component of such forces, from being ordered or called to active duty in such forces.

(2) Each person who hereafter and prior to the enactment of the 1951 Amendments to the Universal Military Training and Service Act is enlisted under the provisions of subsection (g) of this section [1] and who meets the qualifications for enlistment or appointment in a reserve component of the armed forces shall, upon discharge from such enlistment under honorable conditions, be transferred to a reserve component of the armed forces of the United States and shall serve therein for a period of six years or until sooner discharged. Each such person shall, so long as he is a member of such reserve component, be liable to be ordered to active duty, but except in time of war or national emergency declared by the Congress no such person shall be ordered to active duty, without his consent and except as hereinafter provided, for more than one month in any year. In case the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force determines that enlistment, enrollment, or appointment in, or assignment to, an organized unit of a reserve component or an officers' training program of the armed force in which he served is available to, and can without undue hardship be filled by, any such person, it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to, such organized unit or officers' training program and serve satisfactorily therein for a period of four years. Any such person who fails or refuses to perform such duty may be ordered to active duty, without his consent, for an additional period of not more than twelve consecutive months. Any such person who enlists or accepts appointment in any such organized unit and serves satisfactorily therein for a period of four years shall, except in time of war or national emergency declared by the Congress, be relieved from any further liability under this subsection to serve in any reserve component of the armed forces of the United States, but nothing in this subsection shall be construed to prevent any such person, while in a reserve component of such forces, from being ordered or called to active duty in such forces. The Secretary of Defense is authorized to prescribe regulations governing the transfer of such persons within and between reserve components of the armed forces and determining, for the purpose of the requirements of the foregoing provisions of this paragraph, the credit to be allowed any person so transferring for his previous service in one or more reserve components.

(3) Each person who, subsequent to June 19, 1951, and on or before August 9, 1955, is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof, or in the National Security Training Corps, prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces or in training in the National Security Training Corps, and in a reserve component, for a total period of eight years, unless sooner discharged on the grounds of personal hardship, in accord-

[1] Reference is to a former subsection (g) authorizing one-year enlistments in the armed services by male persons between 18 and 19 years of age that was repealed by section 1(h) of the Act of June 19, 1951 (65 Stat. 80). Present subsection (g) was added by section 1(2)(b) of Public Law 90–40, June 30, 1967 (81 Stat. 100).

ance with regulations and standards prescribed by the Secretary of Defense (or the Secretary of Transportation with respect to the United States Coast Guard). Each such person, on release from active training and service in the Armed Forces or from training in the National Security Training Corps, if physically and mentally qualified, shall be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve under this paragraph and shall be deemed to be a member of the reserve component during that period. If the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the Secretary of Transportation with respect to the United States Coast Guard, determines that enlistment, enrollment, or appointment in, or assignment to, an organized unit of a reserve component or an officers' training program of the armed force in which he served is available to, and can, without undue personal hardship, be filled by such person, that person shall enlist, enroll, or accept appointment in, or accept assignment to, the organized unit or officers' training program, and serve satisfactorily therein.

[Pay and Allowances]

(e) With respect to the persons inducted for training and service under this title there shall be paid, allowed, and extended the same pay, allowances, pensions, disability and death compensation, and other benefits as are provided by law in the case of other enlisted men of like grades and length of service of that component of the armed forces to which they are assigned. Section 3 of the Act of July 25, 1947 (Public Law 239, Eightieth Congress), is hereby amended by deleting therefrom the following: "Act of March 7, 1942 (56 Stat. 143–148, ch. 166), as amended". The Act of March 7, 1942 (56 Stat. 143–148), as amended, [1] is hereby made applicable to persons inducted into the armed forces pursuant to this title.

[Civilian Compensation]

(f) Notwithstanding any other provision of law, any person who is inducted into the armed forces under this Act and who, before being inducted, was receiving compensation from any person may, while serving under that induction, receive compensation from that person.

[National Security Council]

(g) The National Security Council shall periodically advise the Director of the Selective Service System and coordinate with him the work of such State and local volunteer advisory committees which the Director of Selective Service may establish, with respect to the identification, selection, and deferment of needed professional and scientific personnel and those engaged in, and preparing for, critical skills and other essential occupations. In the performance of its duties under this subsection the National Security

[1] The Act of March 7, 1942 (popularly known as the "Missing Persons Act") was repealed by section 8(a) of Public Law 89–544, September 6, 1966 (80 Stat. 632), and was reenacted as subchapter VII of chapter 55 of title 5, United States Code, and as chapter 10 of title 37, United States Code.

Council shall consider the needs of both the Armed Forces and the civilian segment of the population.

(h) [Repealed by section 1(h) of the Act of June 19, 1951 (65 Stat. 80)]

(i) [Subsection (i) terminated as of July 1, 1957, pursuant to section 7 of the Act of September 9, 1950 (64 Stat. 828), as last amended by section 8 of Public Law 85–62, June 27, 1957 (71 Stat. 208)]

(j) [Subsection (j) terminated as of July 1, 1957, pursuant to section 7 of the Act of September 9, 1950 (64 Stat. 828), as last amended by section 8 of Public Law 85–62, June 27, 1957 (71 Stat. 208)]

[Reduction in Period of Service; Operation of National Security Training Commission and Corps]

(k)(1) Upon a finding by him that such action is justified by the strength of the Armed Forces in the light of international conditions, the President, upon recommendations of the Secretary of Defense, is authorized, by Executive order, which shall be uniform in its application to all persons inducted under this title but which may vary as to age groups, to provide for (A) decreasing periods of service under this title but in no case to a lesser period of time than can be economically utilized, or (B) eliminating periods of service required under this title.

(2) Whenever the Congress shall by concurrent resolution declare—

(A) that the period of active service required of any age group or groups of persons inducted under this title should be decreased to any period less than twenty-four months which may be designated in such resolution; or

(B) that the period of active service required of any age group or groups of persons inducted under this title should be eliminated,

the period of active service in the Armed Forces of the age group or groups designed in any such resolution shall be so decreased or eliminated, as the case may be. Whenever the period of active service required under this title of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated by the President or as a result of the adoption of a concurrent resolution of the Congress in accordance with the foregoing provision of this section, all individuals then or thereafter liable for registration under this title who on that date have not attained the nineteenth anniversary of the day of their birth and have not been inducted into the Armed Forces shall be liable, effective on such date, for induction into the National Security Training Corps as hereinafter established for initial military training for a period of six months.

(3) [Repealed by section 8(a) of Public Law 89–554, September 6, 1966 (80 Stat. 656)]

(4) [Repealed by section 8(a) of Public Law 89–554, September 6, 1966 (80 Stat. 656)]

(5) The Commission[1] shall, subject to the direction of the President, exercise general supervision over the training of the National Security Training Corps, which training shall be basic military training. The Commission shall establish such policies and standards with respect to the conduct of the training of members of the National Security Training Corps as are necessary to carry out the purposes of this Act. The Commission shall make adequate provisions for the moral and spiritual welfare of members of the National Security Training Corps. The Secretary of Defense shall designate the military departments to carry out such training. Each military department so designated shall carry out such military training in accordance with the policies and standards of the Commission. The military department or departments so designated to carry out such military training shall, subject to the approval of the Secretary of Defense, and subject to the policies and standards established by the Commission, determine the type or types of basic military training to be given to members of the National Security Training Corps.

(6) [Repealed by section 8(a) of Public Law 89–554, September 6, 1966 (80 Stat. 656)]

(7) Not later than four months following confirmation of the members of the Commission, the Commission shall submit to the Congress legislative recommendations which shall include, but not be limited to—

(A) a broad outline for a program deemed by the Commission and approved by the Secretary of Defense to be appropriate to assure that the training carried out under the provisions of this Act shall be of a military nature, but nothing contained in this paragraph shall be construed to grant to the Commission the authority to prescribe the basic type or types of military training to be given members of the National Security Training Corps;

(B) measures for the personal safety, health, welfare and morals of members of the National Security Training Corps;

(C) a code of conduct, together with penalties for violation thereof;

(D) measures deemed necessary to implement the policies and standards established under the provisions of paragraph (5) of this subsection; and

(E) disability and death benefits and other benefits, and the obligations, duties, liabilities, and responsibilities, to be granted to or imposed upon members of the National Security Training Corps.

All legislative recommendations submitted under this paragraph shall be referred to the Committees on Armed Services of the two Houses, and each of such committees shall, not later than the expiration of the first period of 45 calendar days of continuous sessions

[1] Reference is to the National Security Training Commission, which expired June 30, 1957.

of the Congress, following the date on which the recommendations provided for in this paragraph are transmitted to the Congress, report thereon to its House: *Provided,* That any bill or resolution reported with respect to such recommendations shall be privileged and may be called up by any member of either House but shall be subject to amendments as if it were not so privileged.

(8) No person shall be inducted into the National Security Training Corps until after—

(A) a code of conduct, together with penalties for violation thereof, and measures providing for disability and death benefits have been enacted into law; and

(B) such other legislative recommendations as are provided for in paragraph (7) shall have been considered and such recommendations or any portion thereof shall have been enacted with or without amendments into law; and

(C) the period of service required under this title of persons who have not attained the nineteenth anniversary of the day of their birth has been reduced or eliminated by the President or as a result of the adoption of a concurrent resolution of the Congress in accordance with paragraph (2) of this subsection.

(9) Six months following the commencement of induction of persons into the National Security Training Corps, and semiannually thereafter, the Commission shall submit to the Congress a comprehensive report describing in detail the operation of the National Security Training Corps, including the number of persons inducted therein, a list of camps and stations at which training is being conducted, a report on the number of deaths and injuries occurring during such training and the causes thereof, an estimate of the performance of the persons inducted therein, including an analysis of the disciplinary problems encountered during the preceding six months, the number of civilian employees of the Commission and the administrative costs of the Commission. Simultaneously, there shall be submitted to the Congress by the Secretary of Defense a report setting forth an estimate of the value of the training conducted during the preceding six months, the cost of the training program chargeable to the appropriations made to the Department of Defense, and the number of personnel of the Armed Forces directly engaged in the conduct of such training.

(10) Each person inducted into the National Security Training Corps shall be compensated at the monthly rate of $30: *Provided, however,* That each such person, having a dependent or dependents shall be entitled to receive a dependency allowance equal to the basic allowance for housing provided for persons in pay grade E–1 under section 403 of title 37, United States Code, plus $40 so long as such person has in effect an allotment equal to the amount of such dependency allowance for the support of the dependent or dependents on whose account the allowance is claimed.

(11) No person inducted into the National Security Training Corps shall be assigned for training at an installation located on land outside the continental United States, except that residents of Territories and possessions of the United States may be trained in the Territory or possession from which they were inducted.

(l) [Subsection (l) terminated as of July 1, 1973, pursuant to section 9 of Public Law 85–62, June 27, 1957 (71 Stat. 208), as last amended by section 103 of Public Law 92–129, September 28, 1971 (85 Stat. 355)]

SELECTION

[Manner of Selection for Training and Service]

SEC. 5. [50 U.S.C. App. 455] (a)(1) The selection of persons for training and service under section 4 shall be made in an impartial manner, under such rules and regulations as the President may prescribe, from the persons who are liable for such training and service and who at the time of selection are registered and classified, but not deferred or exempted: *Provided,* That in the selection of persons for training and service under this title, and in the interpretation and execution of the provisions of this title, there shall be no discrimination against any person on account of race or color: *Provided further,* That in the classification of registrants within the jurisdiction of any local board, the registrants of any particular registration may be classified, in the manner prescribed by and in accordance with rules and regulations prescribed by the President, before, together with, or after the registrants of any prior registration or registrations; and in the selection for induction of persons within the jurisdiction of any local board and within any particular classification, persons who were registered at any particular registration may be selected, in the manner prescribed by and in accordance with rules and regulations prescribed by the President, before, together with, or after persons who were registered at any prior registration or registrations: *And provided further,* That nothing herein shall be construed to prohibit the selection or induction of persons by age group or groups under rules and regulations prescribed by the President: *And provided further,* That—

(1) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen unless there is not within the jurisdiction of such local board a sufficient number of persons who are deemed by such local board to be available for induction and who have attained the age of nineteen to enable such local board to meet a call for men which it has been ordered to furnish for induction;

(2) no local board shall order for induction for training and service in the Armed Forces of the United States any person who has not attained the age of nineteen, if there is any person within the jurisdiction of such local board who (i) is as much as ninety days older, (ii) has not attained the age of nineteen, and (iii) is deemed by the local board to be available for induction; and

(3) no local board shall order for induction for training and service in the Armed Forces of the United States an alien unless such alien shall have resided in the United States for one year.

(2) [Repealed by section 2 of Public Law 91–124, November 26, 1969 (85 Stat. 220)]

[Quotas]

(b) Quotas of men to be inducted for training and service under this title shall be determined for each State, Territory, possession, and the District of Columbia, and for subdivisions thereof, on the basis of the actual number of men in the several States, Territories, possessions, and the District of Columbia, and the subdivisions thereof, who are liable for such training and service but who are not deferred after classification, except that credits shall be given in fixing such quotas for residents of such subdivisions who are in the armed forces of the United States on the date fixed for determining such quotas. After such quotas are fixed, credits shall be given in filling such quotas for residents of such subdivision who subsequently become members of such forces. Until the actual numbers necessary for determining the quotas are known, the quotas may be based on estimates, and subsequent adjustments therein shall be made when such actual numbers are known. All computations under this subsection shall be made in accordance with such rules and regulations as the President may prescribe.

(c) [Subsection (c) terminated as of July 1, 1973, pursuant to section 9 of Public Law 85–62, June 27, 1957 (71 Stat. 208), as last amended by section 103 of Public Law 92–129, September 28, 1971. (85 Stat. 355)]

[Random Selection]

(d) Whenever the President has provided for the selection of persons for training and service in accordance with random selection under subsection (a) of this section, calls for induction may be placed under such rules and regulations as he may prescribe, notwithstanding the provisions of subsection (b) of this section.

[Limitation of Number of Inductees]

(e) Notwithstanding any other provision of this Act, not more than 130,000 persons may be inducted into the Armed Forces under this Act in the fiscal year ending June 30, 1972, and not more than 140,000 in the fiscal year ending June 30, 1973, unless a number greater than that authorized in this subsection for such fiscal year or years is authorized by a law enacted after the date of enactment of this subsection.

DEFERMENT AND EXEMPTIONS

[Exemptions from Registration and Service]

SEC. 6. [50 U.S.C. App. 456] (a)(1) Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Environmental Science Services Administration; cadets, United States Military Academy; midshipmen, United States Naval Academy; cadets, United States Air Force Academy;

cadets, United States Coast Guard Academy; midshipmen, Merchant Marine Reserve, United States Naval Reserves; students enrolled in an officer procurement program at military colleges the curriculum of which is approved by the Secretary of Defense; members of reserve components of the Armed Forces, and the Coast Guard, while on active duty; and foreign diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls and other consular agents of foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President who are not citizens of the United States, shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4, except that aliens admitted for permanent residence in the United States shall not be so exempted: *Provided,* That any alien lawfully admitted for permanent residence as defined in paragraph (20) of section 101(a) of the Immigration and Nationality Act, as amended (66 Stat. 163, 8 U.S.C. 1101), and who by reason of occupational status is subject to adjustment to nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of such section 101(a) but who executes a waiver in accordance with section 247(b) of that Act of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status, shall be subject to registration under section 3 of this Act, but shall be deferred from induction for training and service for so long as such occupational status continues. Any person who subsequent to June 24, 1948, serves on active duty for a period of not less than twelve months in the armed forces of a nation with which the United States is associated in mutual defense activities as defined by the President, may be exempted from training and service, but not from registration, in accordance with regulations prescribed by the President, except that no such exemption shall be granted to any person who is a national of a country which does not grant reciprocal privileges to citizens of the United States: *Provided,* That any active duty performed prior to June 24, 1948, by a person in the armed forces of a country allied with the United States during World War II and with which the United States is associated in such mutual defense activities, shall be credited in computation of such twelve-month period: *Provided further,* That any person who is in a medical, dental, or allied specialist category not otherwise deferred or exempted under this subsection shall be liable for registration and training and service until the thirty-fifth anniversary of the date of his birth.

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service while on active duty and assigned to staff the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons, Department of Justice, Environmental Protection Agency, or the Environmental Science Services Administration, or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended, shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4. Not-

withstanding the preceding sentence, commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who, prior to the enactment of this paragraph, had been detailed or assigned duty other than that specified in the preceding sentence shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4.

[Veterans Exemptions]

(b)(1) No person who served honorably on active duty between September 16, 1940, and the date of enactment of this title for a period of twelve months or more, or between December 7, 1941, and September 2, 1945, for a period in excess of ninety days, in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this title, except after a declaration of war or national emergency made by the Congress subsequent to the date of enactment of this title.

(2) No person who served honorably on active duty between September 16, 1940, and the date of enactment of this title for a period of ninety days or more but less than twelve months in the Army, the Air Force, the Navy, the Marine Corps, the Coast Guard, the Public Health Service, or the armed forces of any country allied with the United States in World War II prior to September 2, 1945, shall be liable for induction for training and service under this title, except after a declaration of war or national emergency made by the Congress subsequent to the date of enactment of this title, if—

(A) the local board determined that he is regularly enlisted or commissioned in any organized unit of a reserve component of the armed force in which he served, provided such unit is reasonably accessible to such person without unduly interrupting his normal pursuits and activities (including attendance at a college or university in which he is regularly enrolled), or in a reserve component (other than in an organized unit) of such armed force in any case in which enlistment or commission in an organized unit of a reserve component of such armed force is not available to him; or

(B) the local board determines that enlistment or commission in a reserve component or such armed force is not available to him or that he has voluntarily enlisted or accepted appointment in an organized unit of a reserve component of an armed force other than the armed force in which he served.

Nothing in this paragraph shall be deemed to be applicable to any person to whom paragraph (1) of this subsection is applicable.

(3) Except as provided in section 5(a) of this Act, and notwithstanding any other provision of this Act, no persons who (A) has served honorably on active duty after September 16, 1940, for a period of not less than one year in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (B) subsequent to September 16, 1940, was discharged for the convenience of the Government after having served honorably on active duty for a period of

not less than six months in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard, or (C) has served for a period of not less than twenty-four months (i) as a commissioned officer in the Public Health Service or (ii) as a commissioned officer in the Coast and Geodetic Survey, shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress subsequent to the date of enactment of this title.

(4) No person who is honorably discharged upon the completion of an enlistment pursuant to section 4(c) shall be liable for induction for training and service under this title, except after a declaration of war or national emergency made by the Congress subsequent to the date of enactment of this title.

(5) For the purposes of computation of the periods of active duty referred to in paragraphs (1), (2), or (3) of this subsection, no credit shall be allowed for—

(A) periods of active duty training performed as a member of a reserve component pursuant to an order or call to active duty solely for training purposes;

(B) periods of active duty in which the service consisted solely of training under the Army specialized training program, the Army Air Force college training program, or any similar program under the jurisdiction of the Navy, Marine Corps, or Coast Guard;

(C) periods of active duty as a cadet at the United States Military Academy or United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in a preparatory school after nomination as a principal, alternate, or candidate for admission to any of such academies; or

(D) periods of active duty in any of the armed forces while being processed for entry into or separation from any educational program or institution referred to in paragraphs (B) or (C).

(E) [Subparagraph (E) terminated as of July 1, 1973, pursuant to section 9 of Public Law 85–62, June 27, 1957 (71 Stat. 208), as last amended by section 103 of Public Law 92–129, September 28, 1971 (85 Stat. 355)]

[Reserve Components Exemptions]

(c)(1) Persons who, on February 1, 1951, were members of organized units of the federally recognized National Guard, the federally recognized Air National Guard, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve, shall, so long as they continue to be such members and satisfactorily participate in scheduled drills and training periods as prescribed by the Secretary of Defense, be exempt from training and service by induction under the provisions of this title, but shall not be exempt from registration unless on active duty.

(2)(A) Any person, other than a person referred to in subsection (d) of this section, who—

(i) prior to the issuance of orders for him to report for induction; or

(ii) prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any organized unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction under this title; or

(iii) prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction, under this title;

enlists or accepts appointment, before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard, shall be deferred from training and service under this title so long as he serves satisfactorily as a member of an organized unit of such Reserve or National Guard in accordance with section 10147 of title 10 or section 502 of title 32, United States Code, as the case may be, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense. Enlistments or appointments under subparagraphs (ii) and (iii) of this clause may be accepted notwithstanding the provisions of section 15(d) of this title. Notwithstanding the provisions of subsection (h) of this section, no person deferred under this clause who has completed six years of such satisfactory service as a member of the Ready Reserve or National Guard, and who during such service has performed active duty for training with an armed force for not less than twelve consecutive weeks shall be liable for induction for training and service under this Act, except after a declaration of war or national emergency made by the Congress after August 9, 1955. In no event shall the number of enlistments or appointments made under authority of this paragraph in any fiscal year in any Reserve component of the Armed Forces or in the Army National Guard or the Air National Guard cause the personnel strength of such Reserve component or the Army National Guard or the Air National Guard, as the case may be, to exceed the personnel strength for which funds have been made available by the Congress for such fiscal year.

(B) A person who, under any provision of law, is exempt or deferred from training and service under this Act by reason of membership in a reserve component, the Army National Guard, or the Air National Guard, as the case may be, shall, if he becomes a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, continue to be exempt or deferred to the same extent as if he had not become a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be, so long as he continues to serve satisfactorily.

(C) Except as provided in subsection (b) and the provisions of this subsection, no person who becomes a member of a reserve com-

ponent after February 1, 1951, shall thereby be exempt from registration or training and service by induction under the provisions of this Act.

(D) Notwithstanding any other provision of this Act, the President, under such rules and regulations as he may prescribe, may provide that any person enlisted or appointed after October 4, 1961, in the Ready Reserve of any reserve component of the Armed Forces (other than under section 12103 of title 10, United States Code), the Army National Guard, or the Air National Guard, prior to attaining age of twenty six years, or any person enlisted or appointed in the Army National Guard or the Air National Guard or enlisted in the Ready Reserve of any reserve component prior to attaining the age of eighteen years and six months and deferred under the prior provisions of this paragraph as amended by the Act of October 4, 1961, Public Law 87–378 (75 Stat. 807), or under section 262 of the Armed Forces Reserve Act of 1952, as amended,[1] who fails to serve satisfactorily during his obligated period of service as a member of such Ready Reserve or National Guard or the Ready Reserve of another reserve component or the National Guard of which he becomes a member, may be selected for training and service and inducted into the armed force of which such reserve component is a part, prior to the selection and induction of other persons liable therefor.

[Officers' Training; Deferment of Students Authorized]

(d)(1) Within such numbers as may be prescribed by the Secretary of Defense, any person who (A) has been or may hereafter be selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps, or the Air Reserve Officers' Training Corps, or the Naval Reserve Officers' Training Corps, or the naval and Marine Corps officer candidate traning program established by the Act of August 13, 1946 (60 Stat. 1057), as amended,[2] or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps, or the officer recruitment programs of the Coast Guard and the Coast Guard Reserve, or appointed an ensign, United States Naval Reserve, while undergoing professional training; (B) agrees, in writing, to accept a commission, if tendered, and to serve, subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the United States Coast Guard), not less than two years on active duty after receipt of a commission; and (C) agrees to remain a member of a regular or reserve component until the eighth anniversary of the receipt of a commission in accordance with his obligation under the first sentence of section 651 of title 10, United States Code, or until the sixth anniversary of the receipt of a commission in accordance with his obligation under the second sentence of section 651 of title 10, United States Code, shall be deferred from induction under this title until after completion or termination of the course of instruction and so long as he continues in a regular or reserve status upon

[1] Repealed by Public Law 88–110, September 3, 1963 (77 Stat. 134).
[2] Repealed by section 53 of the Act of August 10, 1956 (70A Stat. 678). See chapters 102 and 103 of title 10, United States Code.

being commissioned, but shall not be exempt from registration. Such persons, except those persons who have previously completed an initial period of military training or an equivalent period of active military training and service, shall be required while enrolled in such programs to complete a period of training equal (as determined under regulation approved by the Secretary of Defense or the Secretary of Transportation with respect to the United States Coast Guard) in duration and type of training to an initial period of military training. There shall be added to the obligated active commissioned service of any person who has agreed to perform such obligatory service in return for financial assistance while attending a civilian college under any such training program a period of not to exceed one year. Except as provided in paragraph (5), upon the successful completion by any person of the required course of instruction under any program listed in clause (A) of the first sentence of this paragraph, such person shall be tendered a commission in the appropriate reserve component of the Armed Forces if he is otherwise qualified for such appointment. If, at the time of, or subsequent to, such appointment, the armed force in which such person is commissioned does not require his service on active duty in fulfillment of the obligation undertaken by him in compliance with clause (B) of the first sentence of this paragraph, such person, shall be ordered to active duty for training with such armed force in the grade in which he was commissioned for a period of active duty for training of not more than six months (not including duty performed under section 10147 of title 10, United States Code), as determined by the Secretary of the military department concerned to be necessary to qualify such person for a mobilization assignment. Upon being commissioned and assigned to a reserve component, such person shall be required to serve therein, or in a reserve component of any other armed force in which he is later appointed, until the eighth anniversary of the receipt of such commission pursuant to the provisions of this section. So long as such person performs satisfactory service, as determined under regulations prescribed by the Secretary of Defense, he shall be deferred from training and service under the provisions of this Act. If such person fails to perform satisfactory service, and such failure is not excused under regulations prescribed by the Secretary of Defense, his commission may be revoked by the Secretary of the military department concerned.

(2) In addition to the training programs enumerated in paragraph (1) of this subsection, and under such regulations as the Secretary of Defense (or the Secretary of the Treasury with respect to the United States Coast Guard) may approve, the Secretaries of the military departments and the Secretary of the Treasury are authorized to establish officer candidate programs leading to the commissioning of persons on active duty. Any person heretofore or hereafter enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve who thereafter has been or may be commissioned therein upon graduation from an Officers' Candidate School of such Armed Force shall, if not ordered to active duty as a commissioned officer, be deferred from training and service under the provisions of this Act so long as he performs satisfactory service as a commissioned

officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned. If such person fails to perform satisfactory service in such unit, and such failure is not excused under such regulations, his commission may be revoked by such Secretary.

(3) Nothing in this subsection shall be deemed to preclude the President from providing, by regulation prescribed under subsection (h) of this section, for the deferment from training and service of any category or categories of students for such periods of time as he may deem appropriate.

(4) [Paragraph (4) terminated as of July 1, 1973, pursuant to section 9 of Public Law 85–62, June 27, 1957 (71 Stat. 208), as last amended by section 103 of Public Law 92–129, September 28, 1971 (85 Stat. 355)]

(5) Notwithstanding paragraph (1), upon the successful completion by any person of the required course of instruction under any Reserve Officers' Training Corps program listed in clause (A) of the first sentence of paragraph (1) and subject to the approval of the Secretary of the military department having jurisdiction over him, such person may, without being relieved of his obligation under that sentence, he tendered, and accept a commission in the Coast and Geodetic Survey [1] instead of a commission in the appropriate reserve component of the Armed Forces. If he does not serve on active duty as a commissioned officer of the Coast and Geodetic Survey for at least six years, he shall, upon discharge therefrom, be tendered a commission in the appropriate reserve component of the Armed Forces, if he is otherwise qualified for such appointment, and, in fulfillment of his obligation under the first sentence of paragraph (1), remain a member of a reserve component until the sixth anniversary of the receipt of his commission in the Coast and Geodetic Survey. While a member of a reserve component he may, in addition to as otherwise provided by law, be ordered to active duty for such period that, when added to the period he served on active duty as a commissioned officer of the Coast and Geodetic Survey, equals two years.

[Aviation Cadet Applicants]

(e) Fully qualified and accepted aviation cadet applicants of the Army, Navy, or Air Force who have signed an agreement of service shall, in such numbers as may be designated by the Secretary of Defense, be deferred, during the period covered by the agreement but not to exceed four months, from induction for training and service under this title but shall not be exempt from registration.

---

[1] Paragraph (5) as enacted (Public Law 87–536, July 18, 1962 (76 Stat. 167)) contained four references to the Coast and Geodetic Survey. The paragraph was never amended to strike out "Coast and Geodetic Survey" and insert "Environmental Science Services Administration".

Section 101(a)(15) of Public Law 92–129, September 28, 1971 (85 Stat. 350), reads as follows:

(15) Section 6(d)(5) [of the Military Selective Service Act of 1967] is amended by striking out "Environmental Science Services Administration" each time it appears and inserting in lieu thereof "National Oceanic and Atmospheric Administration".

[Certain Public Officials]

(f) The Vice President of the United States; the governors of the several States, Territories, and possessions, and all other officials chosen by the voters of the entire State, Territory, or possession; members of the legislative bodies of the United States and of the several States, Territories, and possessions; judges of the courts of record of the United States and of the several States, Territories, possessions, and the District of Columbia shall, while holding such offices, be deferred from training and service under this title in the armed forces of the United States.

[Ministers of Religion; Students Preparing for the Ministry]

(g)(1) Regular or duly ordained ministers of religion, as defined in this title, shall be exempt from training and service, but not from registration, under this title.

(2) Students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be deferred from training and service, but not from registration, under this title. Persons who are or may be deferred under provisions of this subsection shall remain liable for training and service in the Armed Forces under the provisions of section 4(a) of this Act until the thirty-fifth anniversary of the date of their birth. The foregoing sentence shall not be construed to prevent the exemption or continued deferment of such persons if otherwise exempted or deferrable under any other provision of this Act.

[Deferment for Occupations, Dependency, Fitness, Extended Liability; Criteria]

(h) Except as otherwise provided in this subsection the President is authorized, under such rules and regulation as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons whose employment in industry, agriculture, or other occupations or employment, or whose continued service in an Office (other than an Office described in subsection (f)) under the United States or any State, territory or possession, or the District of Columbia, or whose activity in study, research, or medical, dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic, chiropodial, or other endeavors is found to be necessary to the maintenance of the national health, safety, or interest: *Provided,* That no person within any such category shall be deferred except upon the basis of his individual status: *Provided further,* That persons who are or may be deferred under the provisions of this section shall remain liable for training and service in the Armed Forces under the provisions of section 4(a) of this Act until the thirty-fifth anniversary of the date of their birth. This proviso shall not be construed to prevent the continued deferment of such persons if otherwise deferrable under any other provisions of this Act. The President is also

authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces (1) of any or all categories of persons in a status with respect to persons (other than wives alone, except in cases of extreme hardship) dependent upon them for support which renders their deferment advisable, and (2) of any or all categories of those persons found to be physically, mentally, or morally deficient or defective. For the purpose of determining whether or not the deferment of any person is advisable, because of his status with respect to persons dependent upon him for support, any payments of allowances which are payable by the United States to the dependents of persons serving in the Armed Forces of the United States shall be taken into consideration, but the fact that such payments of allowances are payable shall not be deemed conclusively to remove the grounds for deferment when the dependency is based upon financial considerations and shall not be deemed to remove the ground for deferment when the dependency is based upon other than financial considerations and cannot be eliminated by financial assistance to the dependents. Except as otherwise provided in this subsection, the President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces of any or all categories of persons who have children, or wives and children, with whom they maintain a bona fide family relationship in their homes. No deferment from such training and service in the Armed Forces shall be made in the case of any individual except upon the basis of the status of such individual. There shall be posted in a conspicuous place at the office of each local board a list setting forth the names and classification of those persons who have been classified by such local board. The President may, in carrying out the provisions of this title, recommend criteria for the classification of persons subject to induction under this title, and to the extent that such action is determined by the President to be consistent with the national interest, recommended that such criteria be administered uniformly throughout the United States whenever practicable; except that no local board, appeal board, or other agency of appeal of the Selective Service System shall be required to postpone or defer any person by reason of his activity in study, research, or medical, dental, veterinary, optometric, osteopathic, scientific, pharmaceutical, chiropractic, chiropodial, or other endeavors found to be necessary to the maintenance of the national health, safety, or interest solely on the basis of any test, examination, selection system, class standing, or any other means conducted, sponsored, administered, or prepared by any agency or department of the Federal Government, or any private institution, corporation, association, partnership, or individual employed by an agency or department of the Federal Government.

[Postponement of Induction of Students]

(i)(1) Any person who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order for induction shall, upon the facts being presented to the local board, have his induction postponed (A) until

the time of his graduation therefrom, or (B) until he attains the twentieth anniversary of his birth, or (C) until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest. Notwithstanding the preceding sentence, any person who attains the twentieth anniversary of his birth after beginning his last academic year of high school shall have his induction postponed until the end of that academic year if and so long as he continues to pursue satisfactorily a full-time course of instruction.

(2) Any person who while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution is ordered to report for induction under this title, shall, upon the appropriate facts being presented to the local board, have his induction postponed (A) until the end of the semester or term, or academic year in the case of his last academic year, or (B) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier.

[Conscientious Objectors]

(j) Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest.

[Duration of Exemption of Deferment]

(k) No exception from registration, or exemption or deferment from training and service, under this title, shall continue after the cause therefor ceases to exist.

[Minority Discharges]

(l) Notwithstanding any other provisions of law, no person between the ages of eighteen and twenty-one shall be discharged from service in the armed forces of the United States while this

title is in effect because such person entered such service without the consent of his parent or guardian.

[Moral Standards]

(m) No person shall be relieved from training and service under this title by reason of conviction of a criminal offense, except where the offense of which he has been convicted may be punished by death, or by imprisonment for a term exceeding one year.

[Appeals; Occupational Deferments]

(n) In the case of any registrant whose principal place of employment is located outside the appeal board area in which the local board having jurisdiction over the registrant is located, any occupational deferment made under subsection (h) of this section may, within five days after such deferment is made, be submitted for review and decision to the appeal board having jurisdiction over the area in which is located the principal place of employment of the registrant. Such decision of the appeal board shall be final unless modified or changed by the President, and such decision shall be made public.

[Surviving Son or Brother]

(o) Except during the period of a war or a national emergency declared by Congress, no person may be inducted for training and service under this title unless he volunteers for such induction—

(1) if the father or the mother or a brother or a sister of such person was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service, or

(2) during any period of time in which the father or the mother or a brother or a sister of such person is in a captured or missing status as a result of such service.

As used in this subsection, the term "brother" or "sister" means a brother of the whole blood or a sister of the whole blood, as the case may be.

SEC. 7. [Repealed by section 1(r) of the Act of June 19, 1951 (65 Stat. 86)]

[BOUNTIES FOR ENLISTMENT OR INDUCTION; SUBSTITUTES; PURCHASES OF RELEASE]

SEC. 8. [50 U.S.C. App. 458] No bounty may be paid to induce any person to be inducted into an armed force. A clothing allowance authorized by law is not a bounty for the purposes of this section. No person liable for training and service under this Act may furnish a substitute for that training or service. No person may be enlisted, inducted, or appointed in an armed force as a substitute for another. No person liable for training and service under section 4 may escape that training and service or be discharged before the end of his period of training and service by paying money or any

other valuable thing as consideration for his release from that training and service or liability therefor.

SEPARATION FROM SERVICE; REEMPLOYMENT RIGHTS

[Certificates of Service]

SEC. 9. [50 U.S.C. App. 459] (a) Any person inducted into the armed forces under this title for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 4(b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. In addition, each such person who is inducted into the armed forces under this title for training and service shall be given a physical examination at the beginning of such training and service, and upon the completion of his period of training and service under this title, each such person shall be given another physical examination and, upon his written request, shall be given a statement of physical condition by the Secretary concerned: *Provided,* That such statement shall not contain any reference to mental or other conditions which in the judgment of the Secretary concerned would prove injurious to the physical or mental health of the person to whom it pertains: *Provided further,* That, if upon completion of training and service under this title, such person continues on active duty without an interruption of more than seventy-two hours as a member of the Armed Forces of the United States, a physical examination upon completion of such training and service shall not be required unless it is requested by such person, or the medical authorities of the Armed Force concerned determined that the physical examination is warranted.

[Right To Vote; Manner; Poll Tax]

(b) Any person inducted into the armed forces for training and service under this title shall, during the period of such service, be permitted to vote in person or by absentee ballot in any general, special, or primary election occurring in the State of which he is a resident, whether he is within or outside such State at the time of such election, if under the laws of such State he is otherwise entitled so to vote in such election; but nothing in this subsection shall be construed to require granting to any such person a leave of absence or furlough for longer than one day in order to permit him to vote in person in any such election. No person inducted into, or enlisted in, the armed forces for training and service under this title shall, during the period of such service, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, be required to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof.

[Reports on Separated Personnel]

(c) The Secretaries of Army, Navy, Air Force, or Transportation shall furnish to the Selective Service System hereafter established a report of separation for each person separated from active duty.

THE SELECTIVE SERVICE SYSTEM; CONSTRUCTION; CIVILIAN EMPLOYEES

[Establishment of Selective Service System]

SEC. 10. [50 U.S.C. App. 460] (a)(1) There is hereby established in the executive branch of the Government an agency to be known as the Selective Service System, and a Director of Selective Service shall be the head thereof.

(2) The Selective Service System shall include a national headquarters, at least one State headquarters in each State, Territory, and possession of the United States, and in the District of Columbia, and the local boards, appeals boards, and other agencies provided for in subsection (b)(3) of this section.

(3) The Director shall be appointed by the President, by and with the advice and consent of the Senate.

(4) The functions of the Office of Selective Service Records (established by the Act of March 31, 1947) and of the Director of the Office of Selective Service Records are hereby transferred to the Selective Service System and the Director of Selective Service, respectively. The personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Office of Selective Service Records are hereby transferred to the Selective Service System. The Office of Selective Service Records shall cease to exist upon the taking of effect of the provisions of this title: *Provided,* That, effective upon the termination of this title and notwithstanding such termination in other respects, (A) the said Office of Selective Service Records is hereby established on the same basis and with the same functions as obtained prior to the effective date of this title, (B) said reestablished Office shall be responsible for liquidating any other outstanding affairs of the Selective Service System, and (C) the personnel, property, records, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Selective Service System shall be transferred to such reestablished Office of Selective Service Records.

[Administrative Provisions]

(b) The President is authorized to undertake the following:

(1) To prescribe the necessary rules and regulations to carry out the provisions of this title.

(2) To appoint, upon recommendation of the respective governor or comparable executive official, a State director of the Selective Service System for each headquarters in each State, Territory, and possession of the United States and for the District of Columbia, who shall represent the governor and be in immediate charge of the State headquarters of the Selective Service System: *Provided,* That no State director shall serve concurrently in an elected or appointed position of a State or

local government; to employ such number of civilians, and, subject to subsection (e), to order to active duty with their consent and to assign to the Selective Service System such officers of the selective-service section of the State headquarters and headquarters detachments and such other officers of the federally recognized National Guard of the United States or other armed forces personnel (including personnel of the reserve components thereof), as may be necessary for the administration of the national and of the several State headquarters of the Selective Service System.

(3) To create and establish within the Selective Service System civilian local boards, civilian appeal boards, and such other civilian agencies, including agencies of appeal, as may be necessary to carry out its functions with respect to the registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of persons registered under this title, together with such other duties as may be assigned under this title: *Provided,* That no person shall be disqualified from serving as a counselor to registrants, including service as Government appeal agent, because of his membership in a Reserve component of the Armed Forces. He shall create and establish one or more local boards in each county or political subdivision corresponding thereto of each State, territory, and possession of the United States, and in the District of Columbia. The local board and/or its staff shall perform their official duties only within the county or political subdivision corresponding thereto for which the local board is established, or in the case of an intercounty board, within the area for which such board is established, except that the staffs of local boards in more than one county of a State or comparable jurisdiction may be collocated or one staff may serve local boards in more than one county of a State or comparable jurisdiction when such action is approved by the Governor or comparable executive official or officials. Each local board shall consist of three or more members to be appointed by the President from recommendations made by the respective Governors or comparable executive officials. In making such appointment after the date of the enactment of the Act enacting this sentence, the President is requested to appoint the membership of each local board so that to the maximum extent practicable it is proportionately representative of the race and national origin of those registrants within its jurisdiction, but no action by any local board shall be declared invalid on the ground that any board failed to conform to any particular quota as to race or national origin. No citizen shall be denied membership on any local board or appeal board on account of sex. After December 31, 1971, no person shall serve on any local board or appeal board who has served on any local board or appeal board for a period of more than 20 years. Notwithstanding any other provision of this paragraph, an intercounty local board consisting of at least one member from each component county or corresponding subdivision may, with the approval of the Governor or comparable executive official or officials, be established for an area not exceeding five counties or political sub-

divisions corresponding thereto within a State or comparable jurisdiction when the President determines, after considering the public interest involved, that the establishment of such local board will result in a more efficient and economical operation. Any such intercounty local board shall have within its area the same power and jurisdiction as a local board has in its area. A local board may include among its members any citizen otherwise qualified under Presidential regulations, provided he is at least eighteen years of age. No member of any local board shall be a member of the Armed Forces of the United States, but each member of any local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction, and each intercounty local board shall have at least one member from each county or political subdivision corresponding thereto included within the intercounty local board area. Such local boards, or separate panels thereof each consisting of three or more members, shall, under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards hereby authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this title, of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final, except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. There shall be not less than one appeal board located within the area of each Federal judicial district in the United States and within each Territory and possession of the United States, and such additional separate panels thereof, as may be prescribed by the President. Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States and who are not members of the armed forces. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President. The President, upon appeal or upon his own motion, shall have power to determine all claims or questions with respect to inclusion for, or exemption or deferment from training and service under this title, and the determination of the President shall be final. No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction, or for civilian work in the case of a registrant determined to be opposed to participation in war in any form: *Provided,* That such review shall go to the question of the jurisdiction herein reserved to local boards, appeals boards, and the President only when there is no basis in fact for the classification assigned to such registrant. No person who is a civilian officer, member, agent, or employee of the Office of Selective Service Records, or the Selective Service System, or of any

local board or appeal board or other agency of such Office or System, shall be excepted from registration or deferred or exempted from training and service, as provided for in this title, by reason of his status as such civilian officer, member, agent, or employee.

(4) To appoint, and to fix, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates, the basic pay of such officers, agents, and employees as he may deem necessary to carry out the provisions of this title, however, any officer of the armed forces or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this title (except to officers of positions on local boards or appeal boards established or created pursuant to section 10(b)(3)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the armed forces or as such officer or employee in any department or agency of the United States.

(5) To utilize the services of any or all departments and any and all officers or agents of the United States, and to accept the services of all officers and agents of the several States, Territories, and possessions, and subdivisions thereof, and the District of Columbia, and of private welfare organizations, in the execution of this title.

(6) To purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies upon orders placed by the Public Printer or upon waivers issued in accordance with section 12 of the Printing Act approved January 12, 1895, as amended,[1] and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System, as he may deem necessary to carry out the provisions of this title, with or without advertising or formal contract.

(7) To prescribe eligibility, rules, and regulations governing the release for service in the armed forces, or for any other special service established pursuant to this title, of any person convicted of a violation of any of the provisions of this title.

(8) Subject to the availability of funds appropriated for such purpose, to procure such space as he may deem necessary to carry out the provisions of this title and Public Law 26, Eightieth Congress, approved March 31, 1947, by lease pursuant to existing statutes, except that the provisions of the Act of June 30, 1932 (47 Stat. 412), as amended by section 15 of the Act of March 3, 1933 (47 Stat. 1517; 40 U.S.C. 278a), shall not apply to any lease entered into under the authority of this title.

(9) Subject to the availability of funds appropriated for such purposes, to determine the location of such additional

[1] Repealed by section 3 of Public Law 90–620, October 22, 1968 (82 Stat. 1306). See 44 U.S.C. 504.

temporary installations as he may deem essential; to utilize and enlarge such existing installations; to construct, install, and equip, and to complete the construction, installation, and equipment of such buildings, structures, utilities, and appurtenances (including the necessary grading and removal, repair or remodeling of existing structures and installations), as may be necessary to carry out the provisions of this title; and, in order to accomplish the purpose of this title, to acquire lands and rights pertaining thereto, or other interests therein, for temporary use thereof, by donation or lease, and to prosecute construction thereon prior to the approval of the title by the Attorney General as required by section 355, Revised Statutes, as amended.

(10) Subject to the availability of funds appropriated for such purposes, to utilize, in order to provide and furnish such services as may be deemed necessary or expedient to accomplish the purposes of this title, such personnel of the armed forces and of Reserve components thereof with their consent, and such civilian personnel, as may be necessary. For the purposes of this title, the provisions of section 14 of the Federal Employees' Pay Act of 1946 (Public Law 390, Seventy-ninth Congress)[1] with respect to the maximum limitations as to the number of civilian employees shall not be applicable to the Department of the Army, the Department of the Navy, or the Department of the Air Force.

[Delegation of Authority]

(c) The President is authorized to delegate any authority vested in him under this title, and to provide for the subdelegation of any such authority.

[Gifts]

(d) In the administration of this title, gifts of supplies, equipment, and voluntary services may be accepted.

[Assignment of Armed Forces Personnel]

(e) The total number of armed forces personnel assigned to the Selective Service System under subsection (b)(2) at any time may not be less than the number of such personnel determined by the Director of Selective Service to be necessary, but not to exceed 745 persons, except that the President may assign additional armed forces personnel to the Selective Service System during a time of war or a national emergency declared by Congress or the President.

[Settlement of Travel Claims]

(f) The Director is authorized to make final settlement of individual claims, for amounts not exceeding $500, for travel and other expenses of uncompensated personnel of the Office of Selective

[1] Section 14 of the Federal Employees Pay Act of 1946 added a new subsection to section 607 of the Federal Employees Pay Act of 1945. That section was repealed by section 301(85) of the Budget and Accounting Procedures Act of 1950, September 12, 1950 (64 Stat. 843).

Service Records, or the Selective Service System, incurred while in the performance of official duties, without regard to other provisions of law governing the travel of civilian employees of the Federal Government.

[Semiannual Report to Congress]

(g) The Director of Selective Service shall submit to Congress annually a written report covering the operation of the Selective Service System and such report shall include, by States, information as to the number of persons registered under this Act; the number of persons inducted into military service under this Act; the number of deferments granted under this Act and the basis for such deferments; and such other specific kinds of information as the Congress may from time to time request.

[Maintenance of Selective Service System as Active Standby Organization After Institution of All Volunteer Program]

(h) The Selective Service system shall be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces) and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency.

[EMERGENCY MEDICAL CARE]

SEC. 11. [50 U.S.C. App. 461] Under such rules and regulations as may be prescribed by the President, funds available to carry out the provisions of this title shall also be available for the payment of actual and reasonable expenses of emergency medical care, including hospitalization, of registrants who suffer illness or injury, and the transportation and burial of the remains of registrants who suffer death, while acting under orders issued under the provisions of this title, but such burial expenses shall not exceed the maximum that the Secretary of Veterans Affairs may pay under the provisions of section 902(a) of title 38, United States Code, in any one case.

PENALTIES

SEC. 12. [50 U.S.C. App. 462] (a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person

who shall knowingly, make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title, or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title, or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title, or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this title or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title unless such person has been actually inducted for the training and service prescribed under this title or unless he is subject to trial by court martial under laws in force prior to the enactment of this title.

(b) Any person (1) who knowingly transfers or delivers to another, for the purpose of aiding or abeting the making of any false identification or representation, any registration certificate, alien's certificate of nonresidence, or any other certificate issued pursuant to or prescribed by the provisions of this title, or rules or regulations promulgated hereunder; or (2) who, with intent that it be used for any purpose of false identification or representation, has in his possession any such certificate not duly issued to him; or (3) who forges, alters, knowingly destroys, knowingly mutilates, or in any manner changes any such certificate or any notation duly and validly inscribed thereon; or (4) who, with intent that it be used for any purpose of false identification or representation, photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of such certificate, or any colorable imitation thereof; or (5) who has in his possession any certificate purporting to be a certificate issued pursuant to this title, or rules and regulations promulgated hereunder, which he knows to be falsely made, reproduced, forged, counterfeited, or altered; or (6) who knowingly violates or evades any of the provisions of this title or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of such certificate, shall upon conviction, be fined not to exceed $10,000 or be imprisoned for not more than five years, or both. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any certificate not duly issued to him, such possession shall be deemed sufficient evidence to establish an intent to use such certificate for purposes of false identification or

representation, unless the defendant explains such possession to the satisfaction of the jury.

(c) The Department of Justice shall proceed as expeditiously as possible with a prosecution under this section, or with an appeal, upon the request of the Director of Selective Service System or shall advise the House of Representatives and the Senate in writing the reasons for its failure to do so.

(d) No person shall be prosecuted, tried, or punished for evading, neglecting, or refusing to perform the duty of registering imposed by section 3 of this title unless the indictment is found within five years next after the last day before such person attains the age of twenty-six, or within five years next after the last day before such person does perform his duty to register, whichever shall first occur.

(e) The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of individuals required by a proclamation of the President under section 3 to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.

(f)(1) Except as provided in subsection (g), any person who is required under section 3 to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under such section, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965.

(2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), a person who is required under section 3 to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with section 3 and regulations issued thereunder.

(3) The Secretary of Education, in agreement with the Director, shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

(4) The Secretary of Education, in consultation with the Director, shall issue regulations to implement the requirements of this subsection. Such regulations shall provide that any person to whom the Secretary of Education proposes to deny assistance or benefits under title IV for failure to meet the registration requirements of section 3 and regulations issued thereunder shall be given notice of the proposed denial and shall have a suitable period (of not less than thirty days) after such notice to provide the Secretary with information and materials establishing that he has complied with the registration requirement under section 3. Such regulations

shall also provide that the Secretary may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.

(g) A person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and submit to registration under section 3 if—

(1) the requirement for the person to so register has terminated or become inapplicable to the person; and

(2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

NONAPPLICABILITY OF CERTAIN LAWS

SEC. 13. [50 U.S.C. App. 463] (a) Nothing in section 203, 205, or 207 of title 18 of the United States Code, or in the second sentence of subsection (a) of section 9 of the Act of August 2, 1939 (53 Stat. 1148), entitled "An Act to prevent pernicious political activities", as amended,[1] shall be deemed to apply to any person because of his appointment under authority of this title or the regulations made pursuant thereto as an uncompensated official of the Selective Service System, or as an individual to conduct hearings on appeals of persons claiming exemption from combatant or noncombatant training because of conscientious objections, or as a member of the National Selective Service Appeal Board.

(b) All functions performed under this title shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237)[2] except as to the requirements of section 3 of such Act. Notwithstanding the foregoing sentence, no regulation issued under this Act shall become effective until the expiration of thirty days following the date on which such regulation has been published in the Federal Register. After the publication of any regulation and prior to the date on which such regulation becomes effective, any person shall be given an opportunity to submit his views to the Director on such regulation, but no formal hearing be required on any such regulation. The requirements of this subsection may be waived by the President in the case of any regulation if he (1) determines that compliance with such requirements would materially impair the national defense, and (2) gives public notice to that effect at the time such regulation is issued.

(c) In computing the lump-sum payments made to Air Force Reserve Officers under the provisions of section 2 of the Act of June 16, 1936, as amended (U.S.C., title 10, sec. 300a), and to Reserve officers of the Navy or to their beneficiaries under section 12 of the Act of August 4, 1942, as amended (U.S.C., title 34, sec. 850k[3]), no credit shall be allowed for any period of active service performed from the effective date of this title to the date on which this title shall cease to be effective. Each such lump-sum payment

[1] Second sentence of section 9(a) of the Act of August 2, 1939, was repealed by Public Law 89–554, September 6, 1966 (80 Stat. 378), and reenacted as section 7324(a)(2) of title 5, United State Code.

[2] The Administrative Procedure Act was repealed by Public Law 89–554, September 6, 1966 (80 Stat. 378), and was reenacted as subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

[3] References are to titles 10 and 34 before enactment of title 10 by the Act of August 10, 1956. The sections are no longer classified to the United States Code.

shall be prorated for a fractional part of a year of active service in the case of any reserve officer subject to the provisions of either such section, if such reserve officer performs continuous active service for one or more years (inclusive of such service performed during the period in which this title is effective) and such active service includes a fractional part of a year immediately prior to the effective date of this title, or immediately following the date on which this title shall cease to be effective, or both.

CIVIL RELIEF

SEC. 14. [50 U.S.C. App. 464] Notwithstanding the provisions of section 604 of the Act of October 17, 1940 (54 Stat. 1191), and the provisions of section 4 of the Act of July 25, 1947 (Public Law 239, Eightieth Congress), all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, including specifically article IV thereof, shall be applicable to all persons in the Armed Forces of the United States, including all persons inducted into the Armed Forces pursuant to this title or the Public Health Service, until such time as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is repealed or otherwise terminated by subsequent Act of the Congress: *Provided,* That, with respect to persons inducted into the armed forces while this title is in effect, wherever under any section or provision of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed while such Act is in force, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction.

NOTICE OF TITLE; VOLUNTARY ENLISTMENTS

SEC. 15. [50 U.S.C. App. 465] (a) Every person shall be deemed to have notice of the requirements of this title upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 3.

(b) It shall be the duty of every registrant to keep his local board informed as to his current address and changes in status as required by such rules and regulations as may be prescribed by the President.

(c) If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(d) Except as provided in section 4(c), nothing contained in this title shall be construed to repeal, amend, or suspend the laws now in force authorizing voluntary enlistment or reenlistment in the Armed Forces of the United States, including the reserve components thereof, except that no person shall be accepted for enlistment after he has been issued an order to report for induction unless authorized by the Director and the Secretary of Defense and except that, whenever the Congress or the President has declared that the national interest is imperiled, voluntary enlistment or re-

enlistment in such forces, and their reserve components, may be suspended by the President to such extent as he may deem necessary in the interest of national defense.

(e) In order to assist the Armed Forces in recruiting individuals for voluntary service in the Armed Forces, the Director shall, upon the request of the Secretary of Defense or the Secretary of Transportation, furnish to the Secretary the names and addresses of individuals registered under this Act. Names and addresses furnished pursuant to the preceding sentence may be used by the Secretary of Defense or Secretary of Transportation only for recruiting purposes.

DEFINITIONS

SEC. 16. [50 U.S.C. App. 466] When used in this title—

(a) The term "between the ages of eighteen and twenty-six" shall refer to men who have attained the eighteenth anniversary of the day of their birth and who have not attained the twenty-sixth anniversary of the day of their birth; and other terms designating different age groups shall be construed in a similar manner.

(b) The term "United States", when used in a geographical sense, shall be deemed to mean the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "armed forces" shall be deemed to include the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard.

(d) The term "district court of the United States" shall be deemed to include the courts of the United States for the territories and possessions of the United States.

(e) The term "local board" shall be deemed to include an intercounty local board in the case of any registrant who is subject to the jurisdiction or an intercounty local board.

(f) The term "Director" shall be deemed to mean the Director of the Selective Service System.

(g)(1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization as established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or

organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization.

(h) The term "organized unit", when used with respect to a reserve component, shall be deemed to mean a unit in which the members thereof are required satisfactorily to participate in scheduled drills and training periods as prescribed by the Secretary of Defense.

(i) The term "reserve components of the armed forces" shall, unless the context otherwise requires, be deemed to include the federally recognized National Guard of the United States, the federally recognized Air National Guard of the United States, the Officers' Reserve Corps, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, and the Coast Guard Reserve, and shall include, in addition to the foregoing, the Public Health Service Reserve when serving with the armed forces.

[REPEALS; APPROPRIATIONS; TERMINATION DATE]

SEC. 17. [50 U.S.C. App. 467] (a) Except as provided in this title all laws or any parts of laws in conflict with the provisions of this title are hereby repealed to the extent of such conflict.

(b) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this title. All funds appropriated for the administrative expenses of the National Security Training Commission shall be appropriated directly to the Commission and all funds appropriated to pay the expenses of training carried out by the military departments designated by the Commission shall be appropriated directly to the Department of Defense.

(c) Notwithstanding any other provisions of this title, no person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 6 of this title after the basis for such deferment ceases to exist.

UTILIZATION OF INDUSTRY

SEC. 18. [50 U.S.C. App. 468] (a) Whenever the President after consultation with and receiving advice from the National Security Resources Board [1] determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, or for the use of the Atomic Energy Commission, [2] he is authorized, through the head of any Govern-

[1] The functions of National Security Resources Board under this section were abolished by section 5(a) of Reorganization Plan No. 3 of 1953 (67 Stat. 634).

[2] The Atomic Energy Commission was abolished by Public Law 93–438, October 1, 1974 (88 Stat. 1233), and its functions were transferred to the Nuclear Regulatory Commission and the

ment agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate, except that no order which requires payments there-under in excess of $25,000,000 shall be placed with any person, unless the Committees on Armed Service of the Senate and the House of Representatives have been notified in writing of such proposed order and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such order. For purposes of the preceding sentence, the continuity of a session of Congress is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Any person with whom an order is placed pursuant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section. Under any such program of national procurement, the President shall recognize the valid claim of American small business to participate in such contracts, in such manufactures, and in such distribution of materials, and small business shall be granted a fair share of the orders placed, exclusively for the use of the armed forces or for other Federal agencies now or hereafter designated in this section. For the purposes of this section, a business enterprise shall be determined to be "small business" if (1) its position in the trade or industry of which is a part is not dominant, (2) the number of its employees does not exceed 500, and (3) it is independently owned and operated.

(b) It shall be the duty of any person with whom an order is placed pursuant to the provisions of subsection (a), (1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may prescribe, and (2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible.

(c) In case any person with whom an order is placed pursuant to the provisions of subsection (a) refuses or fails—

(1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may have prescribed;

(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

(3) to produce the kind or quality of articles or materials ordered; or

(4) to furnish the quantity, kind, and quality of articles or materials ordered at such price as shall be negotiated between such person and the Government agency concerned; or in the event of failure to negotiate a price, to furnish the quantity, kind, and quality of articles or materials ordered at such price

---

Energy Research and Development Administration (subsequently transferred to the Department of Energy).

as he may subsequently be determined to be entitled to receive under subsection (d);

the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government.

(d) Fair and just compensation shall be paid by the United States (1) for any articles or materials furnished pursuant to an order placed under subsection (a), or (2) as rental for any plant, mine, or other facility of which possession is taken under subsection (c).

(e) Nothing contained in this section shall be deemed to render inapplicable to any plant, mine, or facility of which possession is taken pursuant to subsection (c) any State or Federal laws concerning the health, safety, security, or employment standards of employees.

(f) Any person, or any officer of any person as defined in this section, who willfully fails or refuses to carry out any duty imposed upon him by subsection (b) of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three years, or by a fine of not more than $50,000, or by both such imprisonment and fine.

(g)(1) As used in this section—

(A) The term "person" means any individual, firm, company, association, corporation, or other form of business organization.

(B) The term "Government agency" means any department, agency, independent establishment, or corporation in the Executive branch of the United States Government.

(2) For the purposes of this section, a plant, mine, or other facility shall be deemed capable of producing any articles or materials if it is then producing or furnishing such articles or materials or if the President after consultation with and receiving advice from the National Security Resources Board determines that it can be readily converted to the production or furnishing of such articles or materials.

(h) The President is empowered, through the Secretary of Defense, to require all producers of steel in the United States to make available, to individuals, firms, associations, companies, corporations, or organized manufacturing industries having orders for steel products or steel materials required by the armed forces, such percentages of the steel production of such producers, in equal proportion deemed necessary for the expeditious execution of orders for such products or materials. Compliance with such requirement shall be obligatory on all such producers of steel and such requirement shall take precedence over all orders and contracts theretofore placed with such producers. If any such producer of steel or the responsible head or heads thereof refuses to comply with such requirement, the President, through the Secretary of Defense, is authorized to take immediate possession of the plant or plants of such producer and, through the appropriate branch, bureau, or department of the armed forces, to insure compliance with such requirement. Any such producer of steel or the responsible head or heads thereof refusing to comply with such requirements shall be deemed guilty of a felony and upon conviction thereof shall be pun-

ished by imprisonment for not more than three years and a fine not exceeding $50,000.

SAVING PROVISION

SEC. 19. [50 U.S.C. App. 469] Nothing in this title shall be deemed to amend any provision of the National Security Act of 1947 (61 Stat. 495).

EFFECTIVE DATE

SEC. 20. [50 U.S.C. App. 470] This title shall become effective immediately; except that unless the President, or the Congress by concurrent resolution, declares a national emergency after the date of enactment of this Act, no person shall be inducted or ordered into active service without his consent under this title within ninety days after the date of its enactment.

AUTHORITY TO ORDER RESERVE COMPONENTS TO ACTIVE FEDERAL SERVICE

SEC. 21. [50 U.S.C. App. 471] Until July 1, 1953, and subject to the limitations imposed by section 2 of the Selective Service Act of 1948, as amended, the President shall be authorized to order into the active military or naval service of the United States for a period of not to exceed twenty-four consecutive months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces. Unless he is sooner released under regulations prescribed by the Secretary of the military department concerned, any member of the inactive or volunteer reserve who served on active duty for a period of 12 months or more in any branch of the Armed Forces between the period of December 7, 1941, and September 2, 1945, inclusive, who is now or may hereafter be ordered to active duty pursuant to this section, shall upon completion of 17 or more months of active duty since June 25, 1950, if he makes application therefor to the Secretary of the branch of service in which he is serving, be released from active duty and shall not thereafter be ordered to active duty for periods in excess of 30 days without his consent except in time of war or national emergency hereafter declared by the Congress: *Provided,* That the foregoing shall not apply to any member of the inactive or volunteer reserve ordered to active duty whose rating or specialty is found by the Secretary of the military department concerned to be critical and whose release to inactive duty prior to the period for which he was ordered to active duty would impair the efficiency of the military department concerned.

The President may retain the unit organizations and the equipment thereof, exclusive of the individual members thereof, in the active Federal service for a total period of five consecutive years, and upon being relieved by the appropriate Secretary from active Federal service, National Guard, or Air National Guard units, shall, insofar as practicable, be returned to their National Guard or Air National Guard status in their respective States, Territories, the District of Columbia, and Puerto Rico, with perti-

nent records, colors, histories, trophies, and other historical impedimenta.

PROCEDURAL RIGHTS

SEC. 22. [50 U.S.C. App. 471a] (a) It is hereby declared to be the purpose of this section to guarantee to each registrant asserting a claim before a local or appeal board, a fair hearing consistent with the informal and expeditious processing which is required by selective service cases.

(b) Pursuant to such rules and regulations as the President may prescribe—

(1) Each registrant shall be afforded the opportunity to appear in person before the local or any appeal board of the Selective Service System to testify and present evidence regarding his status.

(2) Subject to reasonable limitations on the number of witnesses and the total time allotted to each registrant, each registrant shall have the right to present witnesses on his behalf to the local board.

(3) A quorum of any local board or appeal board shall be present during the registrant's personal appearance.

(4) In the event of a decision adverse to the claim of the registrant, the local or appeal board making such decision shall, upon request, furnish to such registrant a brief written statement of the reasons for its decision.

[Title II, consisting largely of amendments to other provisions of law, was repealed by section 53 of the Act of August 10, 1956 (70A Stat. 678).]

PRESIDENTIAL PROCLAMATION NUMBER 4771—REGISTRATION UNDER THE MILITARY SELECTIVE SERVICE ACT

(July 2, 1980, 45 F.R. 45247)

Section 3 of the Military Selective Service Act, as amended (50 U.S.C. App. 453), provides that male citizens of the United States and other male persons residing in the United States who are between the ages of 18 and 26, except those exempted by Sections 3 and 6(a) of the Military Selective Service Act, must present themselves for registration at such time or times and place or places, and in such manner as determined by the President. Section 6(k) provides that such exceptions shall not continue after the cause for the exemption ceases to exist.

The Congress of the United States has made available the funds (H.J. Res. 521, approved by me on June 27, 1980 [Pub. L. 96–282, June 27, 1980, 93 Stat. 552]), which are needed to initiate this registration, beginning with those born on or after January 1, 1960.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Military Selective Service Act, as amended (50 U.S.C. App. 451 et seq.), do hereby proclaim as follows:

1–1. PERSONS TO BE REGISTERED AND DAYS OF REGISTRATION

1–101. Male citizens of the United States and other males residing in the United States, unless exempted by the Military Selective Service Act, as amended, who were born on or after January 1, 1960, and who have attained their eighteenth birthday, shall present themselves for registration in the manner and at the time and places as hereinafter provided.

1–102. Persons born in calendar year 1960 shall present themselves for registration on any of the six days beginning Monday, July 21, 1980.

1–103. Persons born in calendar year 1961 shall present themselves for registration on any of the six days beginning Monday, July 28, 1980.

1–104. Persons born in calendar year 1962 shall present themselves for registration on any of the six days beginning Monday, January 5, 1981.

1–105. Persons born on or after January 1, 1963, shall present themselves for registration on the day they attain the 18th anniversary of their birth or on any day within the period of 60 days beginning 30 days before such date; however, in no event shall such persons present themselves for registration prior to January 5, 1981.

1–106. Aliens who would be required to present themselves for registration pursuant to Sections 1–101 to 1–105, but who are in processing centers on the dates fixed for registration, shall present themselves for registration within 30 days after their release from such centers.

1–107. Aliens and noncitizen nationals of the United States who reside in the United States, but who are absent from the United States on the days fixed for their registration, shall present themselves for registration within 30 days after their return to the United States.

1–108. Aliens and noncitizen nationals of the United States who, on or after July 1, 1980, come into and reside in the United States shall present themselves for registration in accordance with Sections 1–101 to 1–105 or within 30 days after coming into the United States, whichever is later.

1–109. Persons who would have been required to present themselves for registration pursuant to Sections 1–101 to 1–108 but for an exemption pursuant to Section 3 or 6(a) of the Military Selective Service Act, as amended, or but for some condition beyond their control such as hospitalization or incarceration, shall present themselves for registration within 30 days after the cause for their exempt status ceases to exist or within 30 days after the termination of the condition which was beyond their control.

1–2. PLACES AND TIMES FOR REGISTRATION

1–201. Persons who are required to be registered and who are in the United States on any day fixed herein for their registration, shall present themselves for registration before a duly designated employee in any classified United States Post Office.

1–202. Citizens of the United States who are required to be registered and who are not in the United States on any of the days set aside for their registration, shall present themselves at a United States Embassy or Consulate for registration before a diplomatic or consular officer of the United States or before a registrar duly appointed by a diplomatic or consular officer of the United States.

1–203. The hours for registration in United States Post Offices shall be the business hours during the days of operation of the particular United States Post Office. The hours for registration in United States Embassies and Consulates shall be those prescribed by the United States Embassies and Consulates.

1–3. MANNER OF REGISTRATION

1–301. Persons who are required to be registered shall comply with the registration procedures and other rules and regulations prescribed by the Director of Selective Service.

1–302. When reporting for registration each person shall present for inspection reasonable evidence of his identity. After registration, each person shall keep the Selective Service System informed of his current address.

Having proclaimed these requirements for registration, I urge everyone, including employers in the private and public sectors, to cooperate with and assist those persons who are required to be registered in order to ensure a timely and complete registration. Also, I direct the heads of Executive agencies, when requested by the Director of Selective Service and to the extent permitted by law, to cooperate and assist in carrying out the purposes of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

5. DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

a. Section 247 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 247. [50 U.S.C. 1522 note] CHEMICAL WARFARE DEFENSE.

(a) REVIEW AND MODIFICATION OF POLICIES AND DOCTRINES.—The Secretary of Defense shall review the policies and doctrines of the Department of Defense on chemical warfare defense and modify the policies and doctrine as appropriate to achieve the objectives set forth in subsection (b).

(b) OBJECTIVES.—The objectives for the modification of policies and doctrines of the Department of Defense on chemical warfare defense are as follows:

(1) To provide for adequate protection of personnel from any exposure to a chemical warfare agent (including chronic and low-level exposure to a chemical warfare agent) that would endanger the health of exposed personnel because of the deleterious effects of—

(A) a single exposure to the agent;

(B) exposure to the agent concurrently with other dangerous exposures, such as exposures to—

(i) other potentially toxic substances in the environment, including pesticides, other insect and vermin control agents, and environmental pollutants;

(ii) low-grade nuclear and electromagnetic radiation present in the environment;

(iii) preventive medications (that are dangerous when taken concurrently with other dangerous exposures referred to in this paragraph);

(iv) diesel fuel, jet fuel, and other hydrocarbon-based fuels; and

(v) occupational hazards, including battlefield hazards; and

(C) repeated exposures to the agent, or some combination of one or more exposures to the agent and other dangerous exposures referred to in subparagraph (B), over time.

(2) To provide for—

(A) the prevention of and protection against, and the detection (including confirmation) of, exposures to a chemical warfare agent (whether intentional or inadvertent) at levels that, even if not sufficient to endanger health immediately, are greater than the level that is recognized under Department of Defense policies as being the maximum safe

level of exposure to that agent for the general population; and

(B) the recording, reporting, coordinating, and retaining of information on possible exposures described in subparagraph (A), including the monitoring of the health effects of exposures on humans and animals, environmental effects, and ecological effects, and the documenting and reporting of those effects specifically by location.

(3) To provide solutions for the concerns and mission requirements that are specifically applicable for one or more of the Armed Forces in a protracted conflict when exposures to chemical agents could be complex, dynamic, and occurring over an extended period.

(c) RESEARCH PROGRAM.—The Secretary of Defense shall develop and carry out a plan to establish a research program for determining the effects of exposures to chemical warfare agents of the type described in subsection (b). The research shall be designed to yield results that can guide the Secretary in the evolution of policy and doctrine on exposures to chemical warfare agents and to develop new risk assessment methods and instruments with respect to such exposures. The plan shall state the objectives and scope of the program and include a 5-year funding plan.

(d) REPORT.—Not later than May 1, 1999, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the results of the review under subsection (a) and on the research program developed under subsection (c). The report shall include the following:

(1) Each modification of chemical warfare defense policy and doctrine resulting from the review.

(2) Any recommended legislation regarding chemical warfare defense.

(3) The plan for the research program.

---

b. Defense Against Weapons of Mass Destruction Act of 1998

(Title XIV of Public Law 105–261, approved Oct. 17, 1998)

TITLE XIV—DOMESTIC PREPAREDNESS FOR DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

SEC. 1401. [50 U.S.C. 2301 note] SHORT TITLE.

This title may be cited as the "Defense Against Weapons of Mass Destruction Act of 1998".

SEC. 1402. [50 U.S.C. 2301 note] DOMESTIC PREPAREDNESS FOR RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

(a) ENHANCED RESPONSE CAPABILITY.—In light of the continuing potential for terrorist use of weapons of mass destruction against the United States and the need to develop a more fully coordinated response to that threat on the part of Federal, State, and local agencies, the President shall act to increase the effectiveness at the Federal, State, and local level of the domestic emergency preparedness program for response to terrorist incidents involving

weapons of mass destruction by utilizing the President's existing authorities to develop an integrated program that builds upon the program established under the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2714; 50 U.S.C. 2301 et seq.).

(b) REPORT.—Not later than January 31, 1999, the President shall submit to Congress a report containing information on the actions taken at the Federal, State, and local level to develop an integrated program to prevent and respond to terrorist incidents involving weapons of mass destruction.

SEC. 1403. REPORT ON DOMESTIC EMERGENCY PREPAREDNESS.

[Omitted—Amendment]

SEC. 1404. [50 U.S.C. 2301 note] THREAT AND RISK ASSESSMENTS.

(a) THREAT AND RISK ASSESSMENTS.—Assistance to Federal, State, and local agencies provided under the program under section 1402 shall include the performance of assessments of the threat and risk of terrorist employment of weapons of mass destruction against cities and other local areas. Such assessments shall be used by Federal, State, and local agencies to determine the training and equipment requirements under this program and shall be performed as a collaborative effort with State and local agencies.

(b) CONDUCT OF ASSESSMENTS.—The Department of Justice, as lead Federal agency for domestic crisis management in response to terrorism involving weapons of mass destruction, shall—

(1) conduct any threat and risk assessment performed under subsection (a) in coordination with appropriate Federal, State, and local agencies; and

(2) develop procedures and guidance for conduct of the threat and risk assessment in consultation with officials from the intelligence community.

SEC. 1405. [50 U.S.C. 2301 note] ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION.

(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Attorney General, the Secretary of Energy, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency, shall enter into a contract with a federally funded research and development center to establish a panel to assess the capabilities for domestic response to terrorism involving weapons of mass destruction.

(b) COMPOSITION OF PANEL; SELECTION.—(1) The panel shall be composed of members who shall be private citizens of the United States with knowledge and expertise in emergency response matters.

(2) Members of the panel shall be selected by the federally funded research and development center in accordance with the terms of the contract established pursuant to subsection (a).

(c) PROCEDURES FOR PANEL.—The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including procedures for selection of a panel chairman.

(d) DUTIES OF PANEL.—The panel shall—

(1) assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;

(2) assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;

(3) assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded communications, equipment, and planning requirements, and the needs of maritime regions;

(4) recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and

(5) assess the appropriate roles of State and local government in funding effective local response capabilities.

(e) DEADLINE TO ENTER INTO CONTRACT.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act.

(f) DEADLINE FOR SELECTION OF PANEL MEMBERS.—Selection of panel members shall be made not later than 30 days after the date on which the Secretary enters into the contract required by subsection (a).

(g) INITIAL MEETING OF THE PANEL.—The panel shall conduct its first meeting not later than 30 days after the date that all the selections to the panel have been made.

(h) REPORTS.—(1) Not later than 6 months after the date of the first meeting of the panel, the panel shall submit to the President and to Congress an initial report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

(2) Not later than December 15 of each year, beginning in 1999 and ending in 2001, the panel shall submit to the President and to the Congress a report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

(i) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Defense, the Department of Energy, the Department of Health and Human Services, the Department of Justice, and the Federal Emergency Management Agency, or any other Federal department or agency information that the panel considers necessary for the panel to carry out its duties.

(2) The Attorney General, the Secretary of Defense, the Secretary of Energy, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and any other official of the United States shall provide the panel with full and timely cooperation in carrying out its duties under this section.

(j) FUNDING.—The Secretary of Defense shall provide the funds necessary for the panel to carry out its duties from the funds available to the Department of Defense for weapons of mass destruction preparedness initiatives.

(k) COMPENSATION OF PANEL MEMBERS.—(1) Members of the panel shall serve without pay by reason of their work on the panel.

(2) Members of the panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under chapter 57 of title 5, United States Code, while away from their homes or regular place of business in performance of services for the panel.

(l) TERMINATION OF THE PANEL.—The panel shall terminate three years after the date of the appointment of the member selected as chairman of the panel.

(m) DEFINITION.—In this section, the term "weapon of mass destruction" has the meaning given that term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

---

c. Sections 234 and 1051 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

SEC. 234. [50 U.S.C. 2367] ANNUAL REPORT ON THREAT POSED TO THE UNITED STATES BY WEAPONS OF MASS DESTRUCTION, BALLISTIC MISSILES, AND CRUISE MISSILES.

(a) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress by January 30 of each year a report on the threats posed to the United States and allies of the United States—

(1) by weapons of mass destruction, ballistic missiles, and cruise missiles; and

(2) by the proliferation of weapons of mass destruction, ballistic missiles, and cruise missiles.

(b) CONSULTATION.—Each report submitted under subsection (a) shall be prepared in consultation with the Director of Central Intelligence.

(c) MATTERS TO BE INCLUDED.—Each report submitted under subsection (a) shall include the following:

(1) Identification of each foreign country and non-State organization that possesses weapons of mass destruction, ballistic missiles, or cruise missiles, and a description of such weapons and missiles with respect to each such foreign country and non-State organization.

(2) A description of the means by which any foreign country and non-State organization that has achieved capability with respect to weapons of mass destruction, ballistic missiles, or cruise missiles has achieved that capability, including a description of the international network of foreign countries and private entities that provide assistance to foreign countries and non-State organizations in achieving that capability.

(3) An examination of the doctrines that guide the use of weapons of mass destruction in each foreign country that possesses such weapons.

(4) An examination of the existence and implementation of the control mechanisms that exist with respect to nuclear weapons in each foreign country that possesses such weapons.

(5) Identification of each foreign country and non-State organization that seeks to acquire or develop (indigenously or with foreign assistance) weapons of mass destruction, ballistic missiles, or cruise missiles, and a description of such weapons and missiles with respect to each such foreign country and non-State organization.

(6) An assessment of various possible timelines for the achievement by foreign countries and non-State organizations of capability with respect to weapons of mass destruction, ballistic missiles, and cruise missiles, taking into account the probability of whether the Russian Federation and the People's Republic of China will comply with the Missile Technology Control Regime, the potential availability of assistance from foreign technical specialists, and the potential for independent sales by foreign private entities without authorization from their national governments.

(7) For each foreign country or non-State organization that has not achieved the capability to target the United States or its territories with weapons of mass destruction, ballistic missiles, or cruise missiles as of the date of the enactment of this Act, an estimate of how far in advance the United States is likely to be warned before such foreign country or non-State organization achieves that capability.

(8) For each foreign country or non-State organization that has not achieved the capability to target members of the United States Armed Forces deployed abroad with weapons of mass destruction, ballistic missiles, or cruise missiles as of the date of the enactment of this Act, an estimate of how far in advance the United States is likely to be warned before such foreign country or non-State organization achieves that capability.

(d) CLASSIFICATION.—Each report under subsection (a) shall be submitted in classified and unclassified form.

* * * * * * *

SEC. 1051. [31 U.S.C. 1113 note] OVERSIGHT OF COUNTERTERRORISM AND ANTITERRORISM ACTIVITIES; REPORT.

(a) OVERSIGHT OF COUNTERTERRORISM AND ANTITERRORISM ACTIVITIES.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall—

(1) establish a reporting system for executive agencies with respect to the budget and expenditure of funds by such agencies for the purpose of carrying out counterterrorism and antiterrorism programs and activities; and

(2) using such reporting system, collect information on—

(A) the budget and expenditure of funds by executive agencies during the current fiscal year for purposes of carrying out counterterrorism and antiterrorism programs and activities; and

(B) the specific programs and activities for which such funds were expended.

(b) REPORT.—Not later that March 1 of each year, the President shall submit to Congress a report in classified and unclassified form (using the information described in subsection (a)(2)) de-

scribing, for each executive agency and for the executive branch as a whole, the following:

(1) The amounts proposed to be expended for counterterrorism and antiterrorism programs and activities for the fiscal year beginning in the calendar year in which the report is submitted.

(2) The amounts proposed to be expended for counterterrorism and antiterrorism programs and activities for the fiscal year in which the report is submitted and the amounts that have already been expended for such programs and activities for that fiscal year.

(3) The specific counterterrorism and antiterrorism programs and activities being implemented, any priorities with respect to such programs and activities, and whether there has been any duplication of efforts in implementing such programs and activities.

(c) ANNEX ON DOMESTIC EMERGENCY PREPAREDNESS PROGRAM.—As part of the annual report submitted to Congress under subsection (b), the President shall include an annex which provides the following information on the domestic emergency preparedness program for response to terrorist incidents involving weapons of mass destruction (as established under section 1402 of the Defense Against Weapons of Mass Destruction Act of 1998):

(1) Information on program responsibilities for each participating Federal department, agency, and bureau.

(2) A summary of program activities performed during the preceding fiscal year for each participating Federal department, agency, and bureau.

(3) A summary of program obligations and expenditures during the preceding fiscal year for each participating Federal department, agency, and bureau.

(4) A summary of the program plan and budget for the current fiscal year for each participating Federal department, agency, and bureau.

(5) The program budget request for the following fiscal year for each participating Federal department, agency, and bureau.

(6) Recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction that have been made by the advisory panel to assess the capabilities of domestic response to terrorism involving weapons of mass destruction (as established under section 1405 of the Defense Against Weapons of Mass Destruction Act of 1998), and actions taken as a result of such recommendations.

(7) Additional program measures and legislative authority for which congressional action may be required.

d. Defense Against Weapons of Mass Destruction Act of 1996

(Title XIV of Public Law 104–201, approved Sept. 23, 1996)

TITLE XIV—DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

SEC. 1401. [50 U.S.C. 2301 note] SHORT TITLE.

This title may be cited as the "Defense Against Weapons of Mass Destruction Act of 1996".

SEC. 1402. [50 U.S.C. 2301] FINDINGS.

Congress makes the following findings:

(1) Weapons of mass destruction and related materials and technologies are increasingly available from worldwide sources. Technical information relating to such weapons is readily available on the Internet, and raw materials for chemical, biological, and radiological weapons are widely available for legitimate commercial purposes.

(2) The former Soviet Union produced and maintained a vast array of nuclear, biological, and chemical weapons of mass destruction.

(3) Many of the states of the former Soviet Union retain the facilities, materials, and technologies capable of producing additional quantities of weapons of mass destruction.

(4) The disintegration of the former Soviet Union was accompanied by disruptions of command and control systems, deficiencies in accountability for weapons, weapons-related materials and technologies, economic hardships, and significant gaps in border control among the states of the former Soviet Union. The problems of organized crime and corruption in the states of the former Soviet Union increase the potential for proliferation of nuclear, radiological, biological, and chemical weapons and related materials.

(5) The conditions described in paragraph (4) have substantially increased the ability of potentially hostile nations, terrorist groups, and individuals to acquire weapons of mass destruction and related materials and technologies from within the states of the former Soviet Union and from unemployed scientists who worked on those programs.

(6) As a result of such conditions, the capability of potentially hostile nations and terrorist groups to acquire nuclear, radiological, biological, and chemical weapons is greater than at any time in history.

(7) The President has identified North Korea, Iraq, Iran, and Libya as hostile states which already possess some weapons of mass destruction and are developing others.

(8) The acquisition or the development and use of weapons of mass destruction is well within the capability of many extremist and terrorist movements, acting independently or as proxies for foreign states.

(9) Foreign states can transfer weapons to or otherwise aid extremist and terrorist movements indirectly and with plausible deniability.

(10) Terrorist groups have already conducted chemical attacks against civilian targets in the United States and Japan, and a radiological attack in Russia.

(11) The potential for the national security of the United States to be threatened by nuclear, radiological, chemical, or biological terrorism must be taken seriously.

(12) There is a significant and growing threat of attack by weapons of mass destruction on targets that are not military targets in the usual sense of the term.

(13) Concomitantly, the threat posed to the citizens of the United States by nuclear, radiological, biological, and chemical weapons delivered by unconventional means is significant and growing.

(14) Mass terror may result from terrorist incidents involving nuclear, radiological, biological, or chemical materials.

(15) Facilities required for production of radiological, biological, and chemical weapons are much smaller and harder to detect than nuclear weapons facilities, and biological and chemical weapons can be deployed by alternative delivery means other than long-range ballistic missiles.

(16) Covert or unconventional means of delivery of nuclear, radiological, biological, and chemical weapons include cargo ships, passenger aircraft, commercial and private vehicles and vessels, and commercial cargo shipments routed through multiple destinations.

(17) Traditional arms control efforts assume large state efforts with detectable manufacturing programs and weapons production programs, but are ineffective in monitoring and controlling smaller, though potentially more dangerous, unconventional proliferation efforts.

(18) Conventional counterproliferation efforts would do little to detect or prevent the rapid development of a capability to suddenly manufacture several hundred chemical or biological weapons with nothing but commercial supplies and equipment.

(19) The United States lacks adequate planning and countermeasures to address the threat of nuclear, radiological, biological, and chemical terrorism.

(20) The Department of Energy has established a Nuclear Emergency Response Team which is available in case of nuclear or radiological emergencies, but no comparable units exist to deal with emergencies involving biological or chemical weapons or related materials.

(21) State and local emergency response personnel are not adequately prepared or trained for incidents involving nuclear, radiological, biological, or chemical materials.

(22) Exercises of the Federal, State, and local response to nuclear, radiological, biological, or chemical terrorism have revealed serious deficiencies in preparedness and severe problems of coordination.

(23) The development of, and allocation of responsibilities for, effective countermeasures to nuclear, radiological, biological, or chemical terrorism in the United States requires well-coordinated participation of many Federal agencies, and care-

ful planning by the Federal Government and State and local governments.

(24) Training and exercises can significantly improve the preparedness of State and local emergency response personnel for emergencies involving nuclear, radiological, biological, or chemical weapons or related materials.

(25) Sharing of the expertise and capabilities of the Department of Defense, which traditionally has provided assistance to Federal, State, and local officials in neutralizing, dismantling, and disposing of explosive ordnance, as well as radiological, biological, and chemical materials, can be a vital contribution to the development and deployment of countermeasures against nuclear, biological, and chemical weapons of mass destruction.

(26) The United States lacks effective policy coordination regarding the threat posed by the proliferation of weapons of mass destruction.

SEC. 1403. [50 U.S.C. 2302] DEFINITIONS.

In this title:

(1) The term "weapon of mass destruction" means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of—

(A) toxic or poisonous chemicals or their precursors;

(B) a disease organism; or

(C) radiation or radioactivity.

(2) The term "independent states of the former Soviet Union" has the meaning given that term in section 3 of the FREEDOM Support Act (22 U.S.C. 5801).

(3) The term "highly enriched uranium" means uranium enriched to 20 percent or more in the isotope U–235.

Subtitle A—Domestic Preparedness

SEC. 1411. [50 U.S.C. 2311] RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

(a) ENHANCED RESPONSE CAPABILITY.—In light of the potential for terrorist use of weapons of mass destruction against the United States, the President shall take immediate action—

(1) to enhance the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction; and

(2) to provide enhanced support to improve the capabilities of State and local emergency response agencies to prevent and respond to such incidents at both the national and the local level.

(b) REPORT REQUIRED.—Not later than January 31, 1997, the President shall transmit to Congress a report containing—

(1) an assessment of the capabilities of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction and to support State and local prevention and response efforts;

(2) requirements for improvements in those capabilities; and

(3) the measures that should be taken to achieve such improvements, including additional resources and legislative authorities that would be required.

SEC. 1412. [50 U.S.C. 2312] EMERGENCY RESPONSE ASSISTANCE PROGRAM.

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense shall carry out a program to provide civilian personnel of Federal, State, and local agencies with training and expert advice regarding emergency responses to a use or threatened use of a weapon of mass destruction or related materials.

(2) The President may designate the head of an agency other than the Department of Defense to assume the responsibility for carrying out the program on or after October 1, 1999, and relieve the Secretary of Defense of that responsibility upon the assumption of the responsibility by the designated official.

(3) In this section, the official responsible for carrying out the program is referred to as the "lead official".

(b) COORDINATION.—In carrying out the program, the lead official shall coordinate with each of the following officials who is not serving as the lead official:

(1) The Director of the Federal Emergency Management Agency.

(2) The Secretary of Energy.

(3) The Secretary of Defense.

(4) The heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergency responses described in subsection (a)(1).

(c) ELIGIBLE PARTICIPANTS.—The civilian personnel eligible to receive assistance under the program are civilian personnel of Federal, State, and local agencies who have emergency preparedness responsibilities.

(d) INVOLVEMENT OF OTHER FEDERAL AGENCIES.—(1) The lead official may use personnel and capabilities of Federal agencies outside the agency of the lead official to provide training and expert advice under the program.

(2)(A) Personnel used under paragraph (1) shall be personnel who have special skills relevant to the particular assistance that the personnel are to provide.

(B) Capabilities used under paragraph (1) shall be capabilities that are especially relevant to the particular assistance for which the capabilities are used.

(3) If the lead official is not the Secretary of Defense, and requests assistance from the Department of Defense that, in the judgment of the Secretary of Defense would affect military readiness or adversely affect national security, the Secretary of Defense may appeal the request for Department of Defense assistance by the lead official to the President.

(e) AVAILABLE ASSISTANCE.—Assistance available under this program shall include the following:

(1) Training in the use, operation, and maintenance of equipment for—

(A) detecting a chemical or biological agent or nuclear radiation;

(B) monitoring the presence of such an agent or radiation;

(C) protecting emergency personnel and the public; and

(D) decontamination.

(2) Establishment of a designated telephonic link (commonly referred to as a "hot line") to a designated source of relevant data and expert advice for the use of State or local officials responding to emergencies involving a weapon of mass destruction or related materials.

(3) Use of the National Guard and other reserve components for purposes authorized under this section that are specified by the lead official (with the concurrence of the Secretary of Defense if the Secretary is not the lead official).

(4) Loan of appropriate equipment.

(f) LIMITATIONS ON DEPARTMENT OF DEFENSE ASSISTANCE TO LAW ENFORCEMENT AGENCIES.—Assistance provided by the Department of Defense to law enforcement agencies under this section shall be provided under the authority of, and subject to the restrictions provided in, chapter 18 of title 10, United States Code.

(g) ADMINISTRATION OF DEPARTMENT OF DEFENSE ASSISTANCE.—The Secretary of Defense shall designate an official within the Department of Defense to serve as the executive agent of the Secretary for the coordination of the provision of Department of Defense assistance under this section.

(h) FUNDING.—(1) Of the total amount authorized to be appropriated under section 301, $35,000,000 is available for the program required under this section.

(2) Of the amount available for the program pursuant to paragraph (1), $10,500,000 is available for use by the Secretary of Defense to assist the Secretary of Health and Human Services in the establishment of metropolitan emergency medical response teams (commonly referred to as "Metropolitan Medical Strike Force Teams") to provide medical services that are necessary or potentially necessary by reason of a use or threatened use of a weapon of mass destruction.

(3) The amount available for the program under paragraph (1) is in addition to any other amounts authorized to be appropriated for the program under section 301.

SEC. 1413. [50 U.S.C. 2313] NUCLEAR, CHEMICAL, AND BIOLOGICAL EMERGENCY RESPONSE.

(a) DEPARTMENT OF DEFENSE.—The Secretary of Defense shall designate an official within the Department of Defense as the executive agent for—

(1) the coordination of Department of Defense assistance to Federal, State, and local officials in responding to threats involving biological or chemical weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of biological and chemical weapons and related materials and technologies; and

(2) the coordination of Department of Defense assistance to the Department of Energy in carrying out that department's responsibilities under subsection (b).

(b) DEPARTMENT OF ENERGY.—The Secretary of Energy shall designate an official within the Department of Energy as the executive agent for—

(1) the coordination of Department of Energy assistance to Federal, State, and local officials in responding to threats involving nuclear, chemical, and biological weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear weapons and related materials and technologies; and

(2) the coordination of Department of Energy assistance to the Department of Defense in carrying out that department's responsibilities under subsection (a).

(c) FUNDING.—Of the total amount authorized to be appropriated under section 301, $15,000,000 is available for providing assistance described in subsection (a).

SEC. 1414. [50 U.S.C. 2314] CHEMICAL-BIOLOGICAL EMERGENCY RESPONSE TEAM.

(a) DEPARTMENT OF DEFENSE RAPID RESPONSE TEAM.—The Secretary of Defense shall develop and maintain at least one domestic terrorism rapid response team composed of members of the Armed Forces and employees of the Department of Defense who are capable of aiding Federal, State, and local officials in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction containing chemical, biological, or related materials.

(b) ADDITION TO FEDERAL RESPONSE PLAN.—Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 611(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(b)) guidance on the use and deployment of the rapid response teams established under this section to respond to emergencies involving weapons of mass destruction. The Director shall carry out this subsection in consultation with the Secretary of Defense and the heads of other Federal agencies involved with the emergency response plans.

SEC. 1415. [50 U.S.C. 2315] TESTING OF PREPAREDNESS FOR EMERGENCIES INVOLVING NUCLEAR, RADIOLOGICAL, CHEMICAL, AND BIOLOGICAL WEAPONS.

(a) EMERGENCIES INVOLVING CHEMICAL OR BIOLOGICAL WEAPONS.—(1) The Secretary of Defense shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving biological weapons and related materials and emergencies involving chemical weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal Emergency Management Agency, the Secretary of Energy, and the heads of any other Federal, State, and local government agencies that have an expertise

or responsibilities relevant to emergencies described in paragraph (1).

(b) EMERGENCIES INVOLVING NUCLEAR AND RADIOLOGICAL WEAPONS.—(1) The Secretary of Energy shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving nuclear and radiological weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal Emergency Management Agency, the Secretary of Defense, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

(c) ANNUAL REVISIONS OF PROGRAMS.—The official responsible for carrying out a program developed under subsection (a) or (b) shall revise the program not later than June 1 in each fiscal year covered by the program. The revisions shall include adjustments that the official determines necessary or appropriate on the basis of the lessons learned from the exercise or exercises carried out under the program in the fiscal year, including lessons learned regarding coordination problems and equipment deficiencies.

(d) OPTION TO TRANSFER RESPONSIBILITY.—(1) The President may designate the head of an agency outside the Department of Defense to assume the responsibility for carrying out the program developed under subsection (a) beginning on or after October 1, 1999, and relieve the Secretary of Defense of that responsibility upon the assumption of the responsibility by the designated official.

(2) The President may designate the head of an agency outside the Department of Energy to assume the responsibility for carrying out the program developed under subsection (b) beginning on or after October 1, 1999, and relieve the Secretary of Energy of that responsibility upon the assumption of the responsibility by the designated official.

(e) FUNDING.—Of the total amount authorized to be appropriated under section 301, $15,000,000 is available for the development and execution of the programs required by this section, including the participation of State and local agencies in exercises carried out under the programs.

SEC. 1416. [50 U.S.C. 2316] MILITARY ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS IN EMERGENCY SITUATIONS INVOLVING BIOLOGICAL OR CHEMICAL WEAPONS.

[Subsections (a), (b), and (c) omitted—Amendments]

(d) CIVILIAN EXPERTISE.—The President shall take reasonable measures to reduce the reliance of civilian law enforcement officials on Department of Defense resources to counter the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States. The measures shall include—

(1) actions to increase civilian law enforcement expertise to counter such a threat; and

(2) actions to improve coordination between civilian law enforcement officials and other civilian sources of expertise, within and outside the Federal Government, to counter such a threat.

(e) REPORTS.—The President shall submit to Congress the following reports:

(1) Not later than 90 days after the date of the enactment of this Act, a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States.

(2) Not later than one year after such date, a report describing—

(A) the actions planned to be taken to carry out subsection (d); and

(B) the costs of such actions.

(3) Not later than three years after such date, a report updating the information provided in the reports submitted pursuant to paragraphs (1) and (2), including the measures taken pursuant to subsection (d).

SEC. 1417. [50 U.S.C. 2317] RAPID RESPONSE INFORMATION SYSTEM.

(a) INVENTORY OF RAPID RESPONSE ASSETS.—(1) The head of each Federal Response Plan agency shall develop and maintain an inventory of physical equipment and assets under the jurisdiction of that agency that could be made available to aid State and local officials in search and rescue and other disaster management and mitigation efforts associated with an emergency involving weapons of mass destruction. The agency head shall submit a copy of the inventory, and any updates of the inventory, to the Director of the Federal Emergency Management Agency for inclusion in the master inventory required under subsection (b).

(2) Each inventory shall include a separate listing of any equipment that is excess to the needs of that agency and could be considered for disposal as excess or surplus property for use for response and training with regard to emergencies involving weapons of mass destruction.

(b) MASTER INVENTORY.—The Director of the Federal Emergency Management Agency shall compile and maintain a comprehensive listing of all inventories prepared under subsection (a). The first such master list shall be completed not later than December 31, 1997, and shall be updated annually thereafter.

(c) ADDITION TO FEDERAL RESPONSE PLAN.—Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 611(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(b)) guidance on accessing and using the physical equipment and assets included in the master list developed under subsection to respond to emergencies involving weapons of mass destruction.

(d) DATABASE ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Director of the Federal Emergency Management Agency, in consultation with the Secretary of Defense, shall prepare a database

on chemical and biological agents and munitions characteristics and safety precautions for civilian use. The initial design and compilation of the database shall be completed not later than December 31, 1997.

(e) ACCESS TO INVENTORY AND DATABASE.—The Director of the Federal Emergency Management Agency shall design and maintain a system to give Federal, State, and local officials access to the inventory listing and database maintained under this section in the event of an emergency involving weapons of mass destruction or to prepare and train to respond to such an emergency. The system shall include a secure but accessible emergency response hotline to access information and request assistance.

Subtitle B—Interdiction of Weapons of Mass Destruction and Related Materials

SEC. 1421. [50 U.S.C. 2331] PROCUREMENT OF DETECTION EQUIPMENT UNITED STATES BORDER SECURITY.

Of the amount authorized to be appropriated by section 301, $15,000,000 is available for the procurement of—

(1) equipment capable of detecting the movement of weapons of mass destruction and related materials into the United States;

(2) equipment capable of interdicting the movement of weapons of mass destruction and related materials into the United States; and

(3) materials and technologies related to use of equipment described in paragraph (1) or (2).

SEC. 1422. EXTENSION OF COVERAGE OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.

[Omitted—Amendment]

SEC. 1423. [50 U.S.C. 2332] SENSE OF CONGRESS CONCERNING CRIMINAL PENALTIES.

(a) SENSE OF CONGRESS CONCERNING INADEQUACY OF SENTENCING GUIDELINES.—It is the sense of Congress that the sentencing guidelines prescribed by the United States Sentencing Commission for the offenses of importation, attempted importation, exportation, and attempted exportation of nuclear, biological, and chemical weapons materials constitute inadequate punishment for such offenses.

(b) URGING OF REVISON TO GUIDELINES.—Congress urges the United States Sentencing Commission to revise the relevant sentencing guidelines to provide for increased penalties for offenses relating to importation, attempted importation, exportation, and attempted exportation of nuclear, biological, or chemical weapons or related materials or technologies under the following provisions of law:

(1) Section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410).

(2) Sections 38 and 40 of the Arms Export Control Act (22 U.S.C. 2778 and 2780).

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(4) Section 309(c) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2139a(c))).

SEC. 1424. [50 U.S.C. 2333] INTERNATIONAL BORDER SECURITY.

(a) SECRETARY OF DEFENSE RESPONSIBILITY.—The Secretary of Defense, in consultation and cooperation with the Commissioner of Customs, shall carry out programs for assisting customs officials and border guard officials in the independent states of the former Soviet Union, the Baltic states, and other countries of Eastern Europe in preventing unauthorized transfer and transportation of nuclear, biological, and chemical weapons and related materials. Training, expert advice, maintenance of equipment, loan of equipment, and audits may be provided under or in connection with the programs.

(b) FUNDING.—Of the total amount authorized to be appropriated by section 301, $15,000,000 is available for carrying out the programs referred to in subsection (a).

(c) ASSISTANCE TO STATES OF THE FORMER SOVIET UNION.—Assistance under programs referred to in subsection (a) may (notwithstanding any provision of law prohibiting the extension of foreign assistance to any of the newly independent states of the former Soviet Union) be extended to include an independent state of the former Soviet Union if the President certifies to Congress that it is in the national interest of the United States to extend assistance under this section to that state.

Subtitle C—Control and Disposition of Weapons of Mass Destruction and Related Materials Threatening the United States

SEC. 1431. COVERAGE OF WEAPONS-USABLE FISSILE MATERIALS IN COOPERATIVE THREAT REDUCTION PROGRAMS ON ELIMINATION OR TRANSPORTATION OF NUCLEAR WEAPONS.

[Omitted—Amendment]

SEC. 1432. [50 U.S.C. 2341] ELIMINATION OF PLUTONIUM PRODUCTION.

(a) REPLACEMENT PROGRAM.—The Secretary of Energy, in consultation with the Secretary of Defense, shall develop a cooperative program with the Government of Russia to eliminate the production of weapons grade plutonium by modifying or replacing the reactor cores at Tomsk–7 and Krasnoyarsk–26 with reactor cores that are less suitable for the production of weapons-grade plutonium.

(b) PROGRAM REQUIREMENTS.—(1) The program shall be designed to achieve completion of the modifications or replacements of the reactor cores within three years after the modification or replacement activities under the program are begun.

(2) The plan for the program shall—

(A) specify—

(i) successive steps for the modification or replacement of the reactor cores; and

(ii) clearly defined milestones to be achieved; and

(B) include estimates of the costs of the program.

(c) SUBMISSION OF PROGRAM PLAN TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress—

(1) a plan for the program under subsection (a);

(2) an estimate of the United States funding that is necessary for carrying out the activities under the program for each fiscal year covered by the program; and

(3) a comparison of the benefits of the program with the benefits of other nonproliferation programs.

Subtitle D—Coordination of Policy and Countermeasures Against Proliferation of Weapons of Mass Destruction

SEC. 1441. [50 U.S.C. 2351] NATIONAL COORDINATOR ON NONPROLIFERATION.

(a) DESIGNATION OF POSITION.—The President shall designate an individual to serve in the Executive Office of the President as the National Coordinator for Nonproliferation Matters.

(b) DUTIES.—The Coordinator, under the direction of the National Security Council, shall advise and assist the President by—

(1) advising the President on nonproliferation of weapons of mass destruction, including issues related to terrorism, arms control, and international organized crime;

(2) chairing the Committee on Nonproliferation of the National Security Council; and

(3) taking such actions as are necessary to ensure that there is appropriate emphasis in, cooperation on, and coordination of, nonproliferation research efforts of the United States, including activities of Federal agencies as well as activities of contractors funded by the Federal Government.

(c) ALLOCATION OF FUNDS.—Of the total amount authorized to be appropriated under section 301, $2,000,000 is available to the Department of Defense for carrying out research referred to in subsection (b)(3).

SEC. 1442. [50 U.S.C. 2352] NATIONAL SECURITY COUNCIL COMMITTEE ON NONPROLIFERATION.

(a) ESTABLISHMENT.—The Committee on Nonproliferation (in this section referred to as the "Committee") is established as a committee of the National Security Council.

(b) MEMBERSHIP.—(1) The Committee shall be composed of representatives of the following:

(A) The Secretary of State.

(B) The Secretary of Defense.

(C) The Director of Central Intelligence.

(D) The Attorney General.

(E) The Secretary of Energy.

(F) The Administrator of the Federal Emergency Management Agency.

(G) The Secretary of the Treasury.

(H) The Secretary of Commerce.

(I) Such other members as the President may designate.

(2) The National Coordinator for Nonproliferation Matters shall chair the Committee on Nonproliferation.

(c) RESPONSIBILITIES.—The Committee has the following responsibilities:

(1) To review and coordinate Federal programs, policies, and directives relating to the proliferation of weapons of mass destruction and related materials and technologies, including matters relating to terrorism and international organized crime.

(2) To make recommendations through the National Security Council to the President regarding the following:

(A) Integrated national policies for countering the threats posed by weapons of mass destruction.

(B) Options for integrating Federal agency budgets for countering such threats.

(C) Means to ensure that Federal, State, and local governments have adequate capabilities to manage crises involving nuclear, radiological, biological, or chemical weapons or related materials or technologies, and to manage the consequences of a use of such weapon or related materials or technologies, and that use of those capabilities is coordinated.

(D) Means to ensure appropriate cooperation on, and coordination of, the following:

(i) Preventing the smuggling of weapons of mass destruction and related materials and technologies.

(ii) Promoting domestic and international law enforcement efforts against proliferation-related efforts.

(iii) Countering the involvement of organized crime groups in proliferation-related activities.

(iv) Safeguarding weapons of mass destruction materials and related technologies.

(v) Improving coordination and cooperation among intelligence activities, law enforcement, and the Departments of Defense, State, Commerce, and Energy in support of nonproliferation and counterproliferation efforts.

(vi) Improving export controls over materials and technologies that can contribute to the acquisition of weapons of mass destruction.

(vii) Reducing proliferation of weapons of mass destruction and related materials and technologies.

SEC. 1443. [50 U.S.C. 2353] COMPREHENSIVE PREPAREDNESS PROGRAM.

(a) PROGRAM REQUIRED.—The President, acting through the Committee on Nonproliferation established under section 1442, shall develop a comprehensive program for carrying out this title.

(b) CONTENT OF PROGRAM.—The program set forth in the report shall include specific plans as follows:

(1) Plans for countering proliferation of weapons of mass destruction and related materials and technologies.

(2) Plans for training and equipping Federal, State, and local officials for managing a crisis involving a use or threatened use of a weapon of mass destruction, including the consequences of the use of such a weapon.

(3) Plans for providing for regular sharing of information among intelligence, law enforcement, and customs agencies.

(4) Plans for training and equipping law enforcement units, customs services, and border security personnel to counter the smuggling of weapons of mass destruction and related materials and technologies.

(5) Plans for establishing appropriate centers for analyzing seized nuclear, radiological, biological, and chemical weapons, and related materials and technologies.

(6) Plans for establishing in the United States appropriate legal controls and authorities relating to the exporting of nuclear, radiological, biological, and chemical weapons, and related materials and technologies.

(7) Plans for encouraging and assisting governments of foreign countries to implement and enforce laws that set forth appropriate penalties for offenses regarding the smuggling of weapons of mass destruction and related materials and technologies.

(8) Plans for building the confidence of the United States and Russia in each other's controls over United States and Russian nuclear weapons and fissile materials, including plans for verifying the dismantlement of nuclear weapons.

(9) Plans for reducing United States and Russian stockpiles of excess plutonium, reflecting—

(A) consideration of the desirability and feasibility of a United States-Russian agreement governing fissile material disposition and the specific technologies and approaches to be used for disposition of excess plutonium; and

(B) an assessment of the options for United States cooperation with Russia in the disposition of Russian plutonium.

(10) Plans for studying the merits and costs of establishing a global network of means for detecting and responding to terroristic or other criminal use of biological agents against people or other forms of life in the United States or any foreign country.

(c) REPORT.—(1) At the same time that the President submits the budget for fiscal year 1998 to Congress pursuant to section 1105(a) of title 31, United States Code, the President shall submit to Congress a report that sets forth the comprehensive program developed under subsection (a).

(2) The report shall include the following:

(A) The specific plans for the program that are required under subsection (b).

(B) Estimates of the funds necessary, by agency or department, for carrying out such plans in fiscal year 1998 and the following five fiscal years.

(3) The report shall be in an unclassified form. If there is a classified version of the report, the President shall submit the classified version at the same time.

SEC. 1444. [50 U.S.C. 2354] TERMINATION.

After September 30, 1999, the President—

(1) is not required to maintain a National Coordinator for Nonproliferation Matters under section 1441; and

(2) may terminate the Committee on Nonproliferation established under section 1442.

Subtitle E—Miscellaneous

SEC. 1451. [50 U.S.C. 2361] SENSE OF CONGRESS CONCERNING CONTRACTING POLICY.

It is the sense of Congress that the Secretary of Defense, the Secretary of Energy, the Secretary of the Treasury, and the Secretary of State, to the extent authorized by law, should—

(1) contract directly with suppliers in independent states of the former Soviet Union when such action would—

(A) result in significant savings of the programs referred to in subtitle C; and

(B) substantially expedite completion of the programs referred to in subtitle C; and

(2) seek means to use innovative contracting approaches to avoid delay and increase the effectiveness of such programs and of the exercise of such authorities.

SEC. 1452. [50 U.S.C. 2362] TRANSFERS OF ALLOCATIONS AMONG COOPERATIVE THREAT REDUCTION PROGRAMS.

Congress finds that—

(1) the various Cooperative Threat Reduction programs are being carried out at different rates in the various countries covered by such programs; and

(2) it is necessary to authorize transfers of funding allocations among the various programs in order to maximize the effectiveness of United States efforts under such programs.

SEC. 1453. [50 U.S.C. 2363] SENSE OF CONGRESS CONCERNING ASSISTANCE TO STATES OF FORMER SOVIET UNION.

It is the sense of Congress that—

(1) the Cooperative Threat Reduction programs and other United States programs authorized in title XIV of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 22 U.S.C. 5901 et seq.) should be expanded by offering assistance under those programs to other independent states of the former Soviet Union in addition to Russia, Ukraine, Kazakstan, and Belarus; and

(2) the President should offer assistance to additional independent states of the former Soviet Union in each case in which the participation of such states would benefit national security interests of the United States by improving border controls and safeguards over materials and technology associated with weapons of mass destruction.

SEC. 1454. [50 U.S.C. 2364] PURCHASE OF LOW-ENRICHED URANIUM DERIVED FROM RUSSIAN HIGHLY ENRICHED URANIUM.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the allies of the United States and other nations should participate in efforts to ensure that stockpiles of weapons-grade nuclear material are reduced.

(b) ACTIONS BY THE SECRETARY OF STATE.—Congress urges the Secretary of State to encourage, in consultation with the Secretary

of Energy, other countries to purchase low-enriched uranium that is derived from highly enriched uranium extracted from Russian nuclear weapons.

SEC. 1455. [50 U.S.C. 2365] SENSE OF CONGRESS CONCERNING PURCHASE, PACKAGING, AND TRANSPORTATION OF FISSILE MATERIALS AT RISK OF THEFT.

It is the sense of Congress that—

(1) the Secretary of Defense, the Secretary of Energy, the Secretary of the Treasury, and the Secretary of State should purchase, package, and transport to secure locations weapons-grade nuclear materials from a stockpile of such materials if such officials determine that—

(A) there is a significant risk of theft of such materials; and

(B) there is no reasonable and economically feasible alternative for securing such materials; and

(2) if it is necessary to do so in order to secure the materials, the materials should be imported into the United States, subject to the laws and regulations that are applicable to the importation of such materials into the United States.

---

e. Combatting Proliferation of Weapons of Mass Destruction Act of 1996

(Title VII of Public Law 104–293, approved Oct. 11, 1996)

TITLE VII—COMBATTING PROLIFERATION

SEC. 701. [50 U.S.C. 2301 note] SHORT TITLE.

This title may be cited as the "Combatting Proliferation of Weapons of Mass Destruction Act of 1996".

Subtitle A—Assessment of Organization and Structure of Government for Combatting Proliferation

SEC. 711. [50 U.S.C. 2351 note] ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (in this subtitle referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall be composed of twelve members, none of whom may, during the period of their service on the Commission, be an officer or employee of any department, agency, or other establishment of the Executive Branch (other than the Commission), and of whom—

(1) four shall be appointed by the President;

(2) three shall be appointed by the Majority Leader of the Senate;

(3) one shall be appointed by the Minority Leader of the Senate;

(4) three shall be appointed by the Speaker of the House of Representatives; and

(5) one shall be appointed by the Minority Leader of the House of Representatives.

(c) QUALIFICATIONS OF MEMBERS.—(1) To the maximum extent practicable, the individuals appointed as members of the Commission shall be individuals who are nationally recognized for expertise regarding—

(A) the nonproliferation of weapons of mass destruction;

(B) the efficient and effective implementation of United States nonproliferation policy; or

(C) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member if, in the judgment of the official, the individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) INITIAL MEETING.—Not later than 30 days after the date of enactment of an Act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, regardless of whether all the members of the Commission have been appointed as of that date,, [1] the Commission shall hold its first meeting.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(h) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 712. [50 U.S.C. 2351 note] DUTIES OF COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall carry out a thorough study of the organization of the Federal Government, including the elements of the intelligence community, with respect to combatting the proliferation of weapons of mass destruction.

(2) SPECIFIC REQUIREMENTS.—In carrying out the study, the Commission shall—

(A) assess the current structure and organization of the departments and agencies of the Federal Government having responsibilities for combatting the proliferation of weapons of mass destruction; and

(B) assess the effectiveness of United States cooperation with foreign governments with respect to nonproliferation activities, including cooperation—

[1] In subsection (e), the double commas appear in the law as a result of an amendment made by section 708 of title VII of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1999 (as contained in section 101(f) of division A of Public Law 105–277, enacted October 21, 1998).

(i) between elements of the intelligence community and elements of the intelligence-gathering services of foreign governments;

(ii) between other departments and agencies of the Federal Government and the counterparts to such departments and agencies in foreign governments; and

(iii) between the Federal Government and international organizations.

(3) ASSESSMENTS.—In making the assessments under paragraph (2), the Commission should address—

(A) the organization of the export control activities (including licensing and enforcement activities) of the Federal Government relating to the proliferation of weapons of mass destruction;

(B) arrangements for coordinating the funding of United States nonproliferation activities;

(C) existing arrangements governing the flow of information among departments and agencies of the Federal Government responsible for nonproliferation activities;

(D) the effectiveness of the organization and function of interagency groups in ensuring implementation of United States treaty obligations, laws, and policies with respect to nonproliferation;

(E) the administration of sanctions for purposes of nonproliferation, including the measures taken by departments and agencies of the Federal Government to implement, assess, and enhance the effectiveness of such sanctions;

(F) the organization, management, and oversight of United States counterproliferation activities;

(G) the recruitment, training, morale, expertise, retention, and advancement of Federal Government personnel responsible for the nonproliferation functions of the Federal Government, including any problems in such activities;

(H) the role in United States nonproliferation activities of the National Security Council, the Office of Management and Budget, the Office of Science and Technology Policy, and other offices in the Executive Office of the President having responsibilities for such activities;

(I) the organization of the activities of the Federal Government to verify government-to-government assurances and commitments with respect to nonproliferation, including assurances regarding the future use of commodities exported from the United States; and

(J) the costs and benefits to the United States of increased centralization and of decreased centralization in the administration of the nonproliferation activities of the Federal Government.

(4) RESTRICTIONS.—In carrying out the study under paragraph (1), making the assessments under paragraph (2), and addressing the matters identified in paragraph (3), the Commission shall not review, evaluate, or report on—

(A) United States domestic response capabilities with respect to weapons of mass destruction; or

(B) the adequacy or usefulness of United States laws that provide for the imposition of sanctions on countries or entities that engage in the proliferation of weapons of mass destruction.

(b) RECOMMENDATIONS.—In conducting the study, the Commission shall develop recommendations on means of improving the effectiveness of the organization of the departments and agencies of the Federal Government in meeting the national security interests of the United States with respect to the proliferation of weapons of mass destruction. Such recommendations shall include specific recommendations to eliminate duplications of effort, and other inefficiencies, in and among such departments and agencies.

(c) REPORT.—(1) Not later than 18 months after January 18, 1998, the Commission shall submit to Congress a report containing a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 713. [50 U.S.C. 2351 note] POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) CLASSIFIED INFORMATION.—A department or agency may furnish the Commission classified information under this subsection. The Commission shall take appropriate actions to safeguard classified information furnished to the Commission under this paragraph.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 714. [50 U.S.C. 2351 note] COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission 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 level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission 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.

(b) TRAVEL EXPENSES.—The members of the Commission 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, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 715. [50 U.S.C. 2351 note] TERMINATION OF COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 712(c).

SEC. 716. [50 U.S.C. 2351 note] DEFINITION.

For purposes of this subtitle, the term "intelligence community" shall have the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 717. [50 U.S.C. 2351 note] PAYMENT OF COMMISSION EXPENSES.

The compensation, travel expenses, per diem allowances of members and employees of the Commission, and other expenses of the Commission shall not exceed $1,000,000, and shall be paid out of funds available to the Director of Central Intelligence for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Central Intelligence Agency.

Subtitle B—Other Matters

SEC. 721. [50 U.S.C. 2366] REPORTS ON ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS.

(a) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Director of Central Intelligence shall submit to Congress a report on—

(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and

(2) trends in the acquisition of such technology by such countries.

(b) FORM OF REPORTS.—The reports submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

6. NATIONAL DEFENSE STOCKPILE AND NAVAL PETROLEUM RESERVE

a. Strategic and Critical Materials Stock Piling Act

SHORT TITLE

SECTION 1. [50 U.S.C. 98] This Act may be cited as the "Strategic and Critical Materials Stock Piling Act".

FINDINGS AND PURPOSE

SEC. 2. [50 U.S.C. 98a] (a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this Act to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources for supplies of such materials in times of national emergency.

(c) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

MATERIALS TO BE ACQUIRED: PRESIDENTIAL AUTHORITY AND GUIDELINES

SEC. 3. [50 U.S.C. 98b] (a) Subject to subsection (c), the President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this Act, and (2) the quality and quantity of each such material to be acquired for the purposes of this Act and the form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 4 of this Act, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the "stockpile").

(b) The President shall make the determinations required to be made under subsection (a) on the basis of the principles stated in section 2(c).

(c)(1) The quantity of any material to be stockpiled under this Act, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be

stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

MATERIALS CONSTITUTING THE NATIONAL DEFENSE STOCKPILE

SEC. 4. [50 U.S.C. 98c] (a) The stockpile consists of the following materials:

(1) Materials acquired under this Act and contained in the national stockpile on July 29, 1979.

(2) Materials acquired under this Act after July 29, 1979.

(3) Materials in the supplemental stockpile established by section 104(b) of the Agricultural Trade Development and Assistance Act of 1954 (as in efffect from September 21, 1959, through December 31, 1966) on July 29, 1979.

(4) Materials acquired by the United States under the provisions of section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under section 663 of the Foreign Assistance Act of 1961 (22 U.S.C. 2423) that have been determined to be strategic and critical materials for the purposes of this Act and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).

(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 103(a) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1743(a)), and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 103(a) of such Act of August 28, 1954.

(9) Materials transferred to the stockpile under subsection (b).

(10) Materials transferred to the stockpile under subsection (c).

(b) Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is required for the stockpile shall be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this Act.

(c)(1) The Secretary of Energy, in consultation with the Secretary of Defense, shall transfer to the stockpile for disposal in

accordance with this Act uncontaminated materials that are in the Department of Energy inventory of materials for the production of defense-related items, are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.

(2) The Secretary of Defense shall determine whether materials are suitable for transfer to the stockpile under this subsection, are suitable for disposal through the stockpile, and are uncontaminated.

AUTHORITY FOR STOCKPILE OPERATIONS

SEC. 5. [50 U.S.C. 98d] (a)(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 6(a), no funds may be obligated or appropriated for acquisition of any material under this Act unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(2) If for any fiscal year the President proposes certain stockpile transactions in the annual materials plan submitted to Congress for that year under section 11(b) and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committees of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

(b) Except for disposals made under the authority of paragraph (3), (4), or (5) of section 6(a) or under section 7(a), no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law.

(c) There is authorized to be appropriated such sums as may be necessary to provide for the transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.

STOCKPILE MANAGEMENT

SEC. 6. [50 U.S.C. 98e] (a) The President shall—

(1) acquire the materials determined under section 3(a) to be strategic and critical materials;

(2) provide for the proper storage, security, and maintenance of materials in the stockpile;

(3) provide for the upgrading, refining, or processing of any material in the stockpile (notwithstanding any intermediate stockpile quantity established for such material) when necessary to convert such material into a form more suitable for

storage, subsequent disposition, and immediate use in a national emergency;

(4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration or technological obsolescence of such material by replacement of such material with an equivalent quantity of substantially the same material or better material;

(5) subject to the notification required by subsection (d)(2), provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

(6) subject to the provisions of section 5(b), dispose of materials in the stockpile the disposal of which is specifically authorized by law.

(b) Except as provided in subsections (c) and (d), acquisition of strategic and critical materials under this Act shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) and in section 7(a), disposal of strategic and critical materials from the stockpile shall be made in accordance with the next sentence. To the maximum extent feasible—

(1) competitive procedures shall be used in the acquisition and disposal of such materials; and

(2) efforts shall be made in the acquisition and disposal of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss.

(c)(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of strategic and critical materials for, and the disposal under subsection (a)(5) or (a)(6) of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidential expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this Act.

(3) Notwithstanding section 3(c) or any other provision of law, whenever the President provides under subsection (a)(3) for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d)(1) The President may waive the applicability of any provision of the first sentence of subsection (b) to any acquisition of material for, or disposal of material from, the stockpile. Whenever

the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(2) Materials in the stockpile may be disposed of under subsection (a)(5) only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

(e) The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.

SPECIAL DISPOSAL AUTHORITY OF THE PRESIDENT

SEC. 7. [50 U.S.C. 98f] (a) Materials in the stockpile may be released for use, sale, or other disposition—

(1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense; and

(2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense.

(b) Any order issued under subsection (a) shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

MATERIALS DEVELOPMENT AND RESEARCH

SEC. 8. [50 U.S.C. 98g] (a)(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades.

(2) Such investigations shall be carried out in order to—

(A) determine and develop new domestic sources of supply of such ores and mineral substances;

(B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and

(C) develop substitutes for such essential ores and mineral products.

(3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced.

(b) The President shall make scientific, technologic, and economic investigations of the feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 3(a) of this Act to be a strategic and critical material or substitutes therefor.

(c) The President shall make scientific, technologic, and economic investigations concerning the feasibility of—

(1) developing domestic sources of supply of materials (other than materials referred to in subsections (a) and (b)) determined pursuant to section 3(a) to be strategic and critical materials; and

(2) developing or using alternative methods for the refining or processing of a material in the stockpile so as to convert such material into a form more suitable for use during an emergency or for storage.

(d) The President shall encourage the conservation of domestic sources of any material determined pursuant to section 3(a) to be a strategic and critical material by making grants or awarding contracts for research regarding the development of—

(1) substitutes for such material; or

(2) more efficient methods of production or use of such material.

NATIONAL DEFENSE STOCKPILE TRANSACTION FUND

SEC. 9. [50 U.S.C. 98h] (a) There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the "fund").

(b)(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 6(a) shall be covered into the fund.

(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriation Acts) for the following purposes:

(A) The acquisition, maintenance, and disposal of strategic and critical materials under section 6(a).

(B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal.

(C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading).

(D) Testing and quality studies of stockpile materials.

(E) Studying future material and mobilization requirements for the stockpile.

(F) Activities authorized under section 15.

(G) Contracting under competitive procedures for materials development and research to—

(i) improve the quality and availability of materials stockpiled from time to time in the stockpile; and

(ii) develop new materials for the stockpile.

(H) Improvement or rehabilitation of facilities, structures, and infrastructure needed to maintain the integrity of stockpile materials.

(I) Disposal of hazardous materials that are stored in the stockpile and authorized for disposal by law.

(J) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the Government under an administrative decision or negotiated agreement.

(K) Pay of employees of the National Defense Stockpile program.

(L) Other expenses of the National Defense Stockpile program.

(3) Moneys in the fund shall remain available until expended.

(c) All moneys received from the sale of materials being rotated under the provisions of section 6(a)(4) or disposed of under section 7(a) shall be covered into the fund and shall be available only for the acquisition of replacement materials.

(d) If, during a fiscal year, the National Defense Stockpile Manager barters materials in the stockpile for the purpose of acquiring, upgrading, refining, or processing other materials (or for services directly related to that purpose), the contract value of the materials so bartered shall—

(1) be applied toward the total value of materials that are authorized to be disposed of from the stockpile during that fiscal year;

(2) be treated as an acquisition for purposes of satisfying any requirement imposed on the National Defense Stockpile Manager to enter into obligations during that fiscal year under subsection (b)(2); and

(3) not increase or decrease the balance in the fund.

ADVISORY COMMITTEES

SEC. 10. [50 U.S.C. 98h–1] (a) The President may appoint advisory committees composed of individuals with expertise relating to materials in the stockpile or with expertise in stockpile management to advise the President with respect to the acquisition, transportation, processing, refining, storage, security, maintenance, rotation, and disposal of such materials under this Act.

(b) Each member of an advisory committee established under subsection (a) while serving on the business of the advisory committee away from such member's home or regular place of business shall be allowed travel expenses, including per diem in lieu of substance, as authorized by section 5703 of title 5, United States Code, for persons intermittently employed in the Government service.

(c)(1) The President shall appoint a Market Impact Committee composed of representatives from the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of State, the Department of the Treasury, and the Federal Emergency Management Agency, and such other persons as the President considers appropriate. The representatives from the Department of Commerce and the Department of State shall be Cochairmen of the Committee.

(2) The Committee shall advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile that are proposed to be included in the annual materials plan submitted to Congress under section 11(b), or in any revision of such plan, and shall submit to the manager the Committee's recommendations regarding those acquisitions and disposals.

(3) The annual materials plan or the revision of such plan, as the case may be, shall contain—

(A) the views of the Committee on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile;

(B) the recommendations submitted by the Committee under paragraph (2); and

(C) for each acquisition or disposal provided for in the plan or revision that is inconsistent with a recommendation of the Committee, a justification for the acquisition or disposal.

(4) In developing recommendations for the National Defense Stockpile Manager under paragraph (2), the Committee shall consult from time to time with representatives of producers, processors, and consumers of the types of materials stored in the stockpile.

REPORTS TO CONGRESS

SEC. 11. [50 U.S.C. 98h–2] (a) Not later than January 15 of each year, the President shall submit to the Congress an annual written report detailing operations under this Act. Each such report shall include—

(1) information with respect to foreign and domestic purchases of materials during the preceding fiscal year;

(2) information with respect to the acquisition and disposal of materials under this Act by barter, as provided for in section 6(c) of this Act, during such fiscal year;

(3) information with respect to the activities by the Stockpile Manager to encourage the conservation, substitution, and development of strategic materials within the United States;

(4) information with respect to the research and development activities conducted under sections 2 and 8;

(5) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and the anticipated appropriations to be made to the fund, and obligations to be made from the fund, during the current fiscal year; and

(6) such other pertinent information on the administration of this Act as will enable the Congress to evaluate the effec-

tiveness of the program provided for under this Act and to determine the need for additional legislation.

(b)(1) Not later than February 15 of each year, the President shall submit to the appropriate committees of the Congress a report containing an annual materials plan for the operation of the stockpile during the next fiscal year and the succeeding four fiscal years.

(2) Each such report shall include details of all planned expenditures from the National Defense Stockpile Transaction Fund during such period (including expenditures to be made from appropriations from the general fund of the Treasury) and of anticipated receipts from proposed disposal of stockpile materials during such period. Each such report shall also contain details regarding the materials development and research projects to be conducted under section 9(b)(2)(G) during the fiscal years covered by the report. With respect to each development and research project, the report shall specify the amount planned to be expended from the fund, the material intended to be developed, the potential military or defense industrial applications for that material, and the development and research methodologies to be used.

(3) Any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 5(a)(2), that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with section 5(a)(2), as appropriate.

DEFINITIONS

SEC. 12. [50 U.S.C. 98h–3] For the purposes of this Act:

(1) The term "strategic and critical materials" means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) The term "national emergency" means a general declaration of emergency with respect to the national defense made by the President or by the Congress.

IMPORTATION OF STRATEGIC AND CRITICAL MATERIALS

SEC. 13. [50 U.S.C. 98h–4] The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law.

BIENNIAL REPORT ON STOCKPILE REQUIREMENTS

SEC. 14. [50 U.S.C. 98h–5] (a) Not later than January 15 of every other year, the Secretary of Defense shall submit to Congress a report on stockpile requirements. Each such report shall include—

(1) the Secretary's recommendations with respect to stockpile requirements; and

(2) the matters required under subsection (b).

(b) Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary's recommendations under subsection (a)(1) with respect to stockpile requirements. The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes. The assumptions to be set forth include assumptions relating to each of the following:

(1) The length and intensity of the assumed military conflict.

(2) The military force structure to be mobilized.

(3) The losses anticipated from enemy action.

(4) The military, industrial, and essential civilian requirements to support the national emergency.

(5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(7) Civilian austerity measures required during the mobilization period and military conflict.

(c) The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.

(d) The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b), as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary's recommendations under subsection (a)(1) with respect to stockpile requirements.

(e) The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.

DEVELOPMENT OF DOMESTIC SOURCES

SEC. 15. [50 U.S.C. 98h–6] (a) Subject to subsection (c) and to the extent the President determines such action is required for the national defense, the President shall encourage the development of

domestic sources for materials determined pursuant to section 3(a) to be strategic and critical materials—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials of domestic origin when such materials are needed for the stockpile; and

(2) by contracting with domestic facilities, or making a commitment to contract with domestic facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage and subsequent disposition.

(b) A contract or commitment made under subsection (a) may not exceed five years from the date of the contract or commitment. Such purchases and commitments to purchase may be made for such quantities and on such terms and conditions, including advance payments, as the President considers to be necessary.

(c)(1) Descriptions of proposed transactions under subsection (a) shall be included in the appropriate annual materials plan submitted to Congress under section 11(b). Changes to any such transaction, or the addition of a transaction not included in such plan, shall be made in the manner provided by section 5(a)(2).

(2) The authority of the President to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the National Defense Stockpile Transaction Fund are adequate to meet such obligations. Payments required to be as a result of obligations incurred under this section shall be made from amounts in the fund.

(d) The authority of the President under subsection (a) includes the authority to pay—

(1) the expenses of transporting materials; and

(2) other incidental expenses related to carrying out such subsection.

(e) The President shall include in the reports required under section 11(a) information with respect to activities conducted under this section.

NATIONAL DEFENSE STOCKPILE MANAGER

SEC. 16. [50 U.S.C. 98e–1] (a) The President shall designate a single Federal office to have responsibility for performing the functions of the President under this Act, other than under sections 7 and 13. The office designated shall be one to which appointment is made by the President, by and with the advice and consent of the Senate.

(b) The individual holding the office designated by the President under subsection (a) shall be known for purposes of functions under this Act as the "National Defense Stockpile Manager".

(c) The President may delegate functions of the President under this Act (other than under sections 7 and 13) only to the National Defense Stockpile Manager. Any such delegation made by the President shall remain in effect until specifically revoked by law or Executive order. The President may not delegate functions of the President under sections 7 and 13.

b. Executive Order 12626—National Defense Stockpile Manager

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), as amended, section 3203 of the National Defense Authorization Act for Fiscal Year 1988 (Public Law 100–180), and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Secretary of Defense is designated National Defense Stockpile Manager. The functions vested in the President by the Strategic and Critical Materials Stock Piling Act, except the functions vested in the President by sections 7, 8, and 13 of the Act, are delegated to the Secretary of Defense. The functions vested in the President by section 8(a) of the Act are delegated to the Secretary of the Interior. The functions vested in the President by section 8(b) of the Act are delegated to the Secretary of Agriculture.

Sec. 2. The functions vested in the President by section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are delegated to the Secretary of Defense.

Sec. 3. The functions vested in the President by section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)), are delegated to the Secretary of Defense.

Sec. 4. In executing the functions delegated to him by this Order, the Secretary of Defense may delegate such functions as he may deem appropriate, subject to his direction. The Secretary shall consult with the heads of affected agencies in performing the functions delegated to him by this Order.

RONALD REAGAN.

The WHITE HOUSE, *February 25, 1988.*

---

c. Annual Defense Authorization and Appropriations Acts

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted into law by section 1 of Public Law 106–398, approved Oct. 30, 2000)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2001, the National Defense Stockpile Manager may obligate up to $71,000,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3302. INCREASED RECEIPTS UNDER PRIOR DISPOSAL AUTHORITY.

[Omitted-Amendment]

SEC. 3303. [50 U.S.C. 98d note] DISPOSAL OF TITANIUM.

(a) DISPOSAL REQUIRED.—Notwithstanding any other provision of law, the President shall, by September 30, 2010, dispose of 30,000 short tons of titanium contained in the National Defense Stockpile.

(b) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), of the funds received as a result of the disposal of titanium under subsection (a), $6,000,000 shall be transferred to the American Battle Monuments Commission for deposit in the fund established under section 2113 of title 36, United States Code, for the World War II memorial authorized by section 1 of Public Law 103–32 (107 Stat. 90), and the remainder shall be deposited into the Treasury as miscellaneous receipts.

(c) WORLD WAR II MEMORIAL.—(1) The amount transferred to the American Battle Monuments Commission under subsection (b) shall be used to complete all necessary requirements for the design of, ground breaking for, construction of, maintenance of, and dedication of the World War II memorial. The Commission shall determine how the amount shall be apportioned among such purposes.

(2) Any funds not necessary for the purposes set forth in paragraph (1) shall be transferred to and deposited in the general fund of the Treasury.

(d) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding materials in the National Defense Stockpile.

National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE XXXIV—NATIONAL DEFENSE STOCKPILE

SEC. 3401. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2000, the National Defense Stockpile Manager may obligate up to $78,700,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3402. [50 U.S.C. 98d note] DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL REQUIRED.—Subject to subsection (c), the President shall make disposals from the National Defense Stockpile of materials in quantities as follows:

(1) Beryllium metal, 250 short tons.
(2) Chromium ferro alloy, 496,204 short tons.
(3) Chromium metal, 5,000 short tons.
(4) Palladium, 497,271 troy ounces.

(b) MANAGEMENT OF DISPOSAL TO ACHIEVE OBJECTIVES FOR RECEIPTS.—The President shall manage the disposal of materials under subsection (a) so as to result in receipts to the United States in amounts equal to—

(1) $10,000,000 during fiscal year 2000;

(2) $100,000,000 during the 5-fiscal year period ending September 30, 2004; and

(3) $300,000,000 during the 10-fiscal year period ending September 30, 2009.

(c) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of the material under subsection (a) to the extent that the disposal will result in—

(1) undue disruption of the usual markets of producers, processors, and consumers of the materials proposed for disposal; or

(2) avoidable loss to the United States.

(d) DISPOSITION OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials under subsection (a) shall be deposited into the general fund of the Treasury.

(e) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

(f) INCREASED RECEIPTS UNDER PRIOR DISPOSAL AUTHORITY.—[Omitted-Amendment]

(g) ELIMINATION OF DISPOSAL RESTRICTIONS ON EARLIER DISPOSAL AUTHORITY.—

[Omitted-Amendment]

SEC. 3403. LIMITATIONS ON PREVIOUS AUTHORITY FOR DISPOSAL OF STOCKPILE MATERIALS.

[Omitted-Amendment]

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. [50 U.S.C. 98d note] DEFINITIONS.

In this title:

(1) The term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

(2) The term "National Defense Stockpile Transaction Fund" means the fund in the Treasury of the United States established under section 9(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(a)).

SEC. 3302. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 1999, the National Defense Stockpile Manager may obligate up to $83,000,000 of the funds in the National Defense Stockpile Transaction Fund for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50

U.S.C. 98h(b)(2)), including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3303. [50 U.S.C. 98d note] AUTHORITY TO DISPOSE OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL REQUIRED.—Subject to subsection (c), the President shall dispose of materials contained in the National Defense Stockpile and specified in the table in subsection (b) so as to result in receipts to the United States in the amount of—

(1) $105,000,000 by the end of fiscal year 1999;
(2) $460,000,000 by the end of fiscal year 2002;
(3) $555,000,000 by the end of fiscal year 2003; and
(4) $720,000,000 by the end of fiscal year 2005.

(b) LIMITATIONS ON DISPOSAL AUTHORITY.—(1) The total quantities of materials authorized for disposal by the President under subsection (a) may not exceed the amounts set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Bauxite Refractory	29,000 long calcined ton
Beryllium Metal	100 short tons
Chromite Chemical	34,000 short dry tons
Chromite Refractory	159,000 short dry tons
Chromium Ferroalloy	125,000 short tons
Columbium Carbide Powder	21,372 pounds of contained Columbium
Columbium Concentrates	1,733,454 pounds of contained Columbium
Columbium Ferro	249,396 pounds of contained Columbium
Columbium Metal—Ingots	161,123 pounds of contained Columbium
Diamond, Stones	3,000,000 carats
Germanium Metal	28,198 kilograms
Graphite Natural Ceylon Lump	5,492 short tons
Indium	14,248 troy ounces
Mica Muscovite Block	301,000 pounds
Mica Phlogopite Block	130,745 pounds
Platinum	439,887 troy ounces
Platinum—Iridium	4,450 troy ounces
Platinum—Palladium	750,000 troy ounces
Tantalum Carbide Powder	22,688 pounds of contained Tantalum

Authorized Stockpile Disposals—Continued

Material for disposal	Quantity
Tantalum Metal Ingots	125,000 pounds of contained Tantalum
Tantalum Metal Powder	125,000 pounds of contained Tantalum
Tantalum Minerals	1,751,364 pounds of contained Tantalum
Tantalum Oxide	122,730 pounds of contained Tantalum
Tungsten Carbide Powder	2,032,896 pounds of contained Tungsten
Tungsten Ferro	2,024,143 pounds of contained Tungsten
Tungsten Metal Powder	1,898,009 pounds of contained Tungsten
Tungsten Ores & Concentrates	76,358,235 pounds of contained Tungsten

(2) The President may not dispose of materials under this section in excess of the disposals necessary to result in receipts in the amounts specified in subsection (a).

(c) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of materials under subsection (a) to the extent that the disposal will result in—

(1) undue disruption of the usual markets of producers, processors, and consumers of the materials proposed for disposal; or

(2) avoidable loss to the United States.

(d) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials authorized for disposal under subsection (a) shall be treated as follows:

(1) The following amounts shall be transferred to the Secretary of Health and Human Services, to be credited in the manner determined by the Secretary to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund:

(A) $3,000,000 during fiscal year 1999.
(B) $22,000,000 during fiscal year 2000.
(C) $28,000,000 during fiscal year 2001.
(D) $31,000,000 during fiscal year 2002.
(E) $8,000,000 during fiscal year 2003.

(2) The balance of the funds received shall be deposited into the general fund of the Treasury.

(e) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

(f) AUTHORIZATION OF SALE.—The authority provided by this section to dispose of materials contained in the National Defense Stockpile so as to result in receipts of $100,000,000 of the amount specified for fiscal year 1999 in subsection (a) by the end of that

fiscal year shall be effective only to the extent provided in advance in appropriation Acts.

SEC. 3304. USE OF STOCKPILE FUNDS FOR CERTAIN ENVIRONMENTAL REMEDIATION, RESTORATION, WASTE MANAGEMENT, AND COMPLIANCE ACTIVITIES.

[Omitted Amendments]

Department of Defense Appropriations Act, 1999

(Public Law 104–262, approved Oct. 17, 1998)

TITLE VIII

GENERAL PROVISIONS

* * * * * * *

SEC. 8109. [50 U.S.C. 98d note] (a) DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.—Subject to subsection (c), the President shall dispose of materials contained in the National Defense Stockpile and specified in the table in subsection (b) so as to result in receipts to the United States in the amount of $100,000,000 by the end of fiscal year 1999.

(b) DISPOSAL QUANTITIES.—The total quantities of materials authorized for disposal by the President under subsection (a) may not exceed the amounts set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Beryllium Metal	20 short tons
Chromium Ferroalloy	25,000 short tons
Columbium Carbide Powder	21,372 pounds of contained Columbium
Diamond, Stones	600,000 carats
Platinum	100,000 troy ounces
Platinum—Palladium	150,000 troy ounces
Tantalum Carbide Powder	22,688 pounds of contained Tantalum
Tantalum Metal Ingots	25,000 pounds of contained Tantalum
Tantalum Metal Powder	25,000 pounds of contained Tantalum

(c) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of materials under subsection (a) to the extent that the disposal will result in—

(1) undue disruption of the usual markets of producers, processors, and consumers of the materials proposed for disposal; or

(2) avoidable loss to the United States.

(d) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials authorized for disposal under subsection (a) shall be deposited into the general fund of the Treasury.

(e) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—(1) The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

(2) The disposal authority provided in subsection (a) is referred to in section 3303 of the National Defense Authorization Act for Fiscal Year 1999, and the quantities of the materials specified in the table in subsection (b) are included in the quantities specified in the table in subsection (b) of such section 3303.

(f) DEFINITION.—In this section, the term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. [50 U.S.C. 98d note] DEFINITIONS.

In this title:

(1) The term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

(2) The term "National Defense Stockpile Transaction Fund" means the fund in the Treasury of the United States established under section 9(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(a)).

(3) The term "Market Impact Committee" means the Market Impact Committee established under section 10(c) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–1(c)).

SEC. 3302. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 1998, the National Defense Stockpile Manager may obligate up to $73,000,000 of the funds in the National Defense Stockpile Transaction Fund for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3303. [50 U.S.C. 98d note] DISPOSAL OF BERYLLIUM COPPER MASTER ALLOY IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL AUTHORIZATION.—Pursuant to section 5(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d(b)), the National Defense Stockpile Manager may dispose of all beryllium copper master alloy from the National Defense Stockpile as part of continued efforts to modernize the stockpile.

(b) PRECONDITION FOR DISPOSAL.—Before beginning the disposal of beryllium copper master alloy under subsection (a), the National Defense Stockpile Manager shall certify to Congress that the disposal of beryllium copper master alloy will not adversely affect the capability of the National Defense Stockpile to supply the strategic and critical material needs of the United States.

(c) CONSULTATION WITH MARKET IMPACT COMMITTEE.—In disposing of beryllium copper master alloy under subsection (a), the National Defense Stockpile Manager shall consult with the Market Impact Committee to ensure that the disposal of beryllium copper master alloy does not disrupt the domestic beryllium industry.

(d) EXTENDED SALES CONTRACTS.—The National Defense Stockpile Manager shall provide for the use of long-term sales contracts for the disposal of beryllium copper master alloy under subsection (a) so that the domestic beryllium industry can re-absorb this material into the market in a gradual and nondisruptive manner. However, no such contract shall provide for the disposal of beryllium copper master alloy over a period longer than eight years, beginning on the date of the commencement of the first contract under this section.

(e) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding materials in the National Defense Stockpile.

(f) BERYLLIUM COPPER MASTER ALLOY DEFINED.—For purposes of this section, the term "beryllium copper master alloy" means an alloy of nominally four percent beryllium in copper.

SEC. 3304. [50 U.S.C. 98d note] DISPOSAL OF TITANIUM SPONGE IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL REQUIRED.—Subject to subsection (b), the National Defense Stockpile Manager shall dispose of 34,800 short tons of titanium sponge contained in the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c) and excess to stockpile requirements.

(b) CONSULTATION WITH MARKET IMPACT COMMITTEE.—In disposing of titanium sponge under subsection (a), the National Defense Stockpile Manager shall consult with the Market Impact Committee to ensure that the disposal of titanium sponge does not disrupt the domestic titanium industry.

(c) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding materials in the National Defense Stockpile.

SEC. 3305. [50 U.S.C. 98d note] DISPOSAL OF COBALT IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL REQUIRED.—Subject to subsections (b) and (c), the President shall dispose of cobalt contained in the National Defense Stockpile so as to result in receipts to the United States in amounts equal to—

(1) $20,000,000 during fiscal year 2003;
(2) $50,000,000 during fiscal year 2004;
(3) $64,000,000 during fiscal year 2005;
(4) $67,000,000 during fiscal year 2006; and
(5) $34,000,000 during fiscal year 2007.

(b) LIMITATIONS ON DISPOSAL AUTHORITY.—(1) The total quantity of cobalt authorized for disposal by the President under subsection (a) may not exceed 14,058,014 pounds.

(2) The President may not dispose of cobalt under this section in excess of the disposals necessary to result in receipts in the amounts specified in subsection (a).

(c) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of cobalt under subsection (a) to the extent that the disposal will result in—

(1) undue disruption of the usual markets of producers, processors, and consumers of cobalt; or
(2) avoidable loss to the United States.

(d) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of cobalt under subsection (a) shall be deposited into the general fund of the Treasury.

(e) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding materials in the National Defense Stockpile.

SEC. 3306. REQUIRED PROCEDURES FOR DISPOSAL OF STRATEGIC AND CRITICAL MATERIALS.

[Omitted—Amendment]

SEC. 3307. RETURN OF SURPLUS PLATINUM FROM THE DEPARTMENT OF THE TREASURY.

(a) RETURN OF PLATINUM TO STOCKPILE.—Subject to subsection (b), the Secretary of the Treasury, upon the request of the Secretary of Defense, shall return to the Secretary of Defense for sale or other disposition platinum of the National Defense Stockpile that has been loaned to the Department of the Treasury by the Secretary of Defense, acting as the stockpile manager. The quantity requested and required to be returned shall be any quantity that the Secretary of Defense determines appropriate for sale or other disposition.

(b) ALTERNATIVE TRANSFER OF FUNDS.—The Secretary of the Treasury, with the concurrence of the Secretary of Defense, may transfer to the Secretary of Defense funds in a total amount that is equal to the fair market value of any platinum requested under subsection (a) and not returned. A transfer of funds under this subsection shall be a substitute for a return of platinum under subsection (a). Upon a transfer of funds as a substitute for a return of platinum, the platinum shall cease to be part of the National De-

fense Stockpile. A transfer of funds under this subsection shall be charged to any appropriation for the Department of the Treasury and shall be credited to the National Defense Stockpile Transaction Fund.

(c) RESPONSIBILITY FOR COSTS.—The return of platinum under subsection (a) by the Secretary of the Treasury shall be made without the expenditure of any funds available to the Department of Defense. The Secretary of the Treasury shall be responsible for all costs incurred in connection with the return, such as transportation, storage, testing, refining, or casting costs.

National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Subtitle A—Authorization of Disposals and Use of Funds

SEC. 3301. [50 U.S.C. 98d note] DEFINITIONS.

In this title:

(1) The term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

(2) The term "National Defense Stockpile Transaction Fund" means the fund in the Treasury of the United States established under section 9(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(a)).

SEC. 3302. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 1997, the National Defense Stockpile Manager may obligate up to $60,000,000 of the funds in the National Defense Stockpile Transaction Fund for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3303. [50 U.S.C. 98d note] DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL REQUIRED.—Subject to subsection (c), the President shall dispose of materials contained in the National Defense Stockpile and specified in the table in subsection (b) so as to result in receipts to the United States in amounts equal to—

(1) $81,000,000 during fiscal year 1997; and

(2) $720,000,000 during the ten-fiscal year period ending September 30, 2006.

(b) LIMITATIONS ON DISPOSAL AUTHORITY.—(1) The total quantities of materials authorized for disposal by the President under subsection (a) may not exceed the amounts set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Aluminum	62,881 short tons
Cobalt	26,000,000 pounds contained
Columbium Ferro	930,911 pounds contained
Germanium Metal	40,000 kilograms
Indium	35,000 troy ounces
Palladium	15,000 troy ounces
Platinum	10,000 troy ounces
Rubber, Natural	125,138 long tons
Tantalum, Carbide Powder	6,000 pounds contained
Tantalum, Minerals	750,000 pounds contained
Tantalum, Oxide	40,000 pounds contained

(2) The President may not dispose of materials under this section in excess of the disposals necessary to result in receipts in the amounts specified in subsection (a).

(c) MINIMIZATION OF DISRUPTION AND LOSS.—The President may not dispose of materials under subsection (a) to the extent that the disposal will result in—

(1) undue disruption of the usual markets of producers, processors, and consumers of the materials proposed for disposal; or

(2) avoidable loss to the United States.

(d) TREATMENT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials under subsection (a) shall be—

(1) deposited into the general fund of the Treasury; and

(2) to the extent necessary, used to offset the revenues that will be lost as a result of execution of the amendments made by section 4303(a) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 658).

(e) QUALIFYING OFFSETTING LEGISLATION.—This section is specifically enacted as qualifying offsetting legislation for the purpose of offsetting fully the estimated revenues lost as a result of the amendments made by subsection (a) of section 4303 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 658), and as such is deemed to satisfy the conditions in subsection (b) of such section.

(f) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Subtitle A—Authorization of Disposals and Use of Funds

SEC. 3301. DEFINITIONS.

For purposes of this subtitle:

(1) The term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

(2) The term "National Defense Stockpile Transaction Fund" means the fund in the Treasury of the United States established under section 9(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(a)).

SEC. 3302. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 1996, the National Defense Stockpile Manager may obligate up to $77,100,000 of the funds in the National Defense Stockpile Transaction Fund for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3303. DISPOSAL OF CHROMITE AND MANGANESE ORES AND CHROMIUM FERRO AND MANGANESE METAL ELECTROLYTIC.

[Repealed by section 3402(g) of Public Law 106–65 (113 Stat. 973)**]**

SEC. 3304. RESTRICTIONS ON DISPOSAL OF MANGANESE FERRO.

(a) DISPOSAL OF LOWER GRADE MATERIAL FIRST.—The President may not dispose of high carbon manganese ferro in the National Defense Stockpile that meets the National Defense Stockpile classification of Grade One, Specification 30(a), as revised on May 22, 1992, until completing the disposal of all manganese ferro in the National Defense Stockpile that does not meet such classifica-

tion. The President may not reclassify manganese ferro in the National Defense Stockpile after the date of the enactment of this Act.

(b) REQUIREMENT FOR REMELTING BY DOMESTIC FERROALLOY PRODUCERS.—Manganese ferro in the National Defense Stockpile that does not meet the classification specified in subsection (a) may be sold only for remelting by a domestic ferroalloy producer unless the President determines that a domestic ferroalloy producer is not available to acquire the material.

(c) DOMESTIC FERROALLOY PRODUCER DEFINED.—For purposes of this section, the term "domestic ferroalloy producer" means a company or other business entity that, as determined by the President—

(1) is engaged in operations to upgrade manganese ores of metallurgical grade or manganese ferro; and

(2) conducts a significant level of its research, development, engineering, and upgrading operations in the United States.

SEC. 3305. TITANIUM INITIATIVE TO SUPPORT BATTLE TANK UPGRADE PROGRAM.

During each of the fiscal years 1996 through 2003, the Secretary of Defense shall transfer from stocks of the National Defense Stockpile up to 250 short tons of titanium sponge to the Secretary of the Army for use in the weight reduction portion of the main battle tank upgrade program. Transfers under this section shall be without charge to the Army, except that the Secretary of the Army shall pay all transportation and related costs incurred in connection with the transfer.

National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. AUTHORIZED USES OF STOCKPILE FUNDS.

Subject to such limitations as may be provided in appropriations Acts, during fiscal year 1995, the National Defense Stockpile Manager may obligate up to $54,200,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section.

SEC. 3302. ROTATION OF MATERIALS TO PREVENT TECHNOLOGICAL OBSOLESCENCE.

[Omitted—Amendment]

SEC. 3303. EXTENSION OF LIMITATION ON AUTHORITY TO DISPOSE OF CHROMIUM FERRO AND MANGANESE FERRO.

[Omitted—Amendment]

SEC. 3304. [50 U.S.C. 98d note] LIMITATION ON AUTHORITY TO DISPOSE OF ZINC.

(a) LIMITATION ON DISPOSAL AUTHORITY.—The disposal of zinc from the National Defense Stockpile pursuant to any disposal authority provided by law may not commence before April 1, 1995.

(b) CONDITION ON DISPOSAL AFTER EXPIRATION OF LIMITATION.—If any quantity of zinc is proposed for disposal from the National Defense Stockpile during fiscal year 1995 upon the expiration of the limitation prescribed under subsection (a), the President shall submit to Congress not later than February 15, 1995, a revised annual materials plan under section 11(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–2) that specifically describes the proposed disposals. The revised plan shall include the views of the Market Impact Committee regarding the market impact of the disposals, as required under section 10(c) of such Act (50 U.S.C. 98h–1(c)).

(c) EFFECT ON TRANSFERS OF ZINC TO OTHER FEDERAL AGENCIES.—Nothing in this section shall limit the authority of the National Defense Stockpile Manager to transfer zinc in the National Defense Stockpile to the jurisdiction and control of another Federal agency for official Government use.

(d) NATIONAL DEFENSE STOCKPILE DEFINED.—The term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

SEC. 3305. LIMITATIONS ON DISPOSAL OF CHROMITE AND MANGANESE ORES.

(a) PREFERENCE FOR DOMESTIC UPGRADING.—In offering to enter into agreements pursuant to any provision of law for the disposal of chromite and manganese ores of metallurgical grade from the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c), the President shall give a right of first refusal on all such offers to domestic ferroalloy upgraders.

(b) DOMESTIC FERROALLOY UPGRADER DEFINED.—For purposes of this section, the term "domestic ferroalloy upgrader" means a company or other business entity that, as determined by the President—

(1) is engaged in operations to upgrade chromite or manganese ores of metallurgical grade or is capable of engaging in such operations; and

(2) conducts a significant level of its research, development, engineering, and upgrading operations in the United States.

(c) APPLICATION OF SECTION.—The requirements specified in subsection (a) shall apply during fiscal year 1995.

SEC. 3306. REPORT ON DOMESTIC PRODUCTION OF HIGH PURITY ELECTROLYTIC CHROMIUM METAL.

(a) AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall enter into an agreement with the President of the National Academy of Sciences, under which the Academy will prepare a report regarding the production of high purity electrolytic chromium metal in the United States.

(b) ELEMENTS OF REPORT.—In preparing the report under subsection (a), the National Academy of Sciences shall evaluate—

(1) the capability of industrial facilities in the United States to produce high purity electrolytic chromium metal;

(2) the need to maintain a domestic source for the production of high purity electrolytic chromium metal;

(3) the potential adverse effects on the United States economy and defense capabilities if domestic sources for the production of high purity electrolytic chromium metal are lost;

(4) the availability of high purity electrolytic chromium metal from sources outside the United States; and

(5) the capability and reliability of such foreign sources for the production of high purity electrolytic chromium metal.

(c) SUBMISSION OF REPORT.—Not later than 120 days after the date on which the agreement is entered into under subsection (a), the National Academy of Sciences shall submit to the Secretary of Defense and Congress the report required under such agreement.

National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Subtitle A—Authorizations of Disposals and Use of Funds

SEC. 3301. [50 U.S.C. 98d note] DISPOSAL OF OBSOLETE AND EXCESS MATERIALS CONTAINED IN THE NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL AUTHORIZED.—Subject to the conditions specified in subsection (b), the President may dispose of obsolete and excess materials currently contained in the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c) in order to modernize the stockpile. The materials subject to disposal under this subsection and the quantity of each material authorized to be disposed of by the President are set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Analgesics	53,525 pounds of anhydrous morphine alkaloid
Antimony	32,140 short tons
Diamond Dies, Small	25,473 pieces
Manganese, Electrolytic	14,172 short tons
Mica, Muscovite Block, Stained and Better	1,866,166 pounds
Mica, Muscovite Film, 1st & 2d quality	158,440 pounds
Mica, Muscovite Splittings	12,540,382 pounds
Quinidine	2,471,287 avoirdupois ounces
Quinidine, Non-Stockpile Grade	1,691 avoirdupois ounces
Quinine	2,770,091 avoirdupois ounces
Quinine, Non-Stockpile Grade	475,950 avoirdupois ounces

Authorized Stockpile Disposals—Continued

Material for disposal	Quantity
Rare Earths	504 short dry tons
Vanadium Pentoxide	718 short tons of contained vanadium

(b) CONDITIONS ON DISPOSAL.—The authority of the President under subsection (a) to dispose of materials stored in the National Defense Stockpile may not be used unless and until the Secretary of Defense certifies to Congress that the disposal of such materials will not adversely affect the capability of the stockpile to supply the strategic and critical materials necessary to meet the needs of the United States during a period of national emergency that requires a significant level of mobilization of the economy of the United States, including any reconstitution of the military and industrial capabilities necessary to meet the planning assumptions used by the Secretary of Defense under section 14(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–5(b)).

SEC. 3302. AUTHORIZED USES OF STOCKPILE FUNDS.

Subject to such limitations as may be provided in appropriations Acts, during fiscal year 1994, the National Defense Stockpile Manager may obligate up to $67,300,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section.

SEC. 3303. REVISION OF AUTHORITY TO DISPOSE OF CERTAIN MATERIALS AUTHORIZED FOR DISPOSAL IN FISCAL YEAR 1993.

(a) CHROMITE AND MANGANESE ORES.—During fiscal year 1994, the disposal of chromite and manganese ores of metallurgical grade under the authority of section 3302(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2649; 50 U.S.C. 98d note) may be made only for processing within the United States and the territories and possessions of the United States.

(b) [Omitted—Amendment]

SEC. 3304. CONVERSION OF CHROMIUM ORE TO HIGH PURITY CHROMIUM METAL.

(a) UPGRADE PROGRAM AUTHORIZED.—Subject to subsection (b), the National Defense Stockpile Manager may carry out a program to upgrade to high purity chromium metal any stocks of chromium ore held in the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c) if the National Defense Stockpile Manager determines that additional quantities of high purity chromium metal are needed in the stockpile.

(b) INCLUSION IN ANNUAL MATERIALS PLAN.—Before entering into any contract in connection with the upgrade program authorized under subsection (a), the National Defense Stockpile Manager shall include a description of the upgrade program in the report

containing the annual materials plan for the operation of the National Defense Stockpile required to be submitted to Congress under section 11(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–2(b)) or in a revision of the report made in the manner provided by section 5(a)(2) of such Act (50 U.S.C. 98d(a)(2)).

National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Subtitle A—Modernization Program

SEC. 3301. DEFINITIONS.

For purposes of this subtitle:

(1) The terms "National Defense Stockpile" and "stockpile" mean the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

(2) The term "National Defense Stockpile Transaction Fund" means the fund in the Treasury of the United States established under section 9(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(a)).

SEC. 3302. DISPOSAL OF OBSOLETE AND EXCESS MATERIALS CONTAINED IN THE NATIONAL DEFENSE STOCKPILE.

(a) DISPOSAL AUTHORIZED.—Subject to the conditions specified in subsection (b), the President may dispose of obsolete and excess materials currently contained in the National Defense Stockpile in order to modernize the stockpile. The materials subject to disposal under this subsection and the quantity of each material authorized to be disposed of by the President are set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Aluminum Oxide, Abrasive Grain	51,022 short tons
Aluminum Oxide, Fused Crude	249,867 short tons
Antimony	2,007 short tons
Asbestos, Chrysotile	3,004 short tons
Bauxite, Metal Grade, Jamaican	12,457,740 long tons
Bauxite, Metal Grade, Surinam	5,299,597 long tons
Bauxite, Refractory	207,067 long tons
Beryl Ore	17,729 short tons
Bismuth	1,825,955 pounds
Cadmium	6,328,570 pounds
Chromite, Chemical Grade Ore	208,414 short dry tons
Chromite, Metallurgical Grade Ore	1,511,356 short dry tons
Chromite, Refractory Grade Ore	232,414 short dry tons
Chromium, Ferro	576,526 short tons
Cobalt	13,000,000 pounds of contained cobalt

Authorized Stockpile Disposals—Continued

Material for disposal	Quantity
Copper	29,641 short tons
Diamond, Bort	4,001,334 carats
Diamond Stones	2,422,075 carats
Fluorspar, Acid Grade	892,856 short dry tons
Fluorspar, Metallurgical Grade	410,822 short dry tons
Germanium	713 kilograms
Graphite, Natural, Malagasy, Crystalline	10,573 short tons
Graphite, Natural, Other than Ceylon & Malagasy.	2,803 short tons
Iodine	5,835,022 pounds
Jewel bearings	51,778,337 pieces
Lead	610,053 short tons
Manganese, Ferro	938,285 short tons
Manganese Ore, Metallurgical Grade	1,627,425 short dry tons
Manganese, Battery Grade, Natural Ore	68,226 short dry tons
Manganese, Battery Grade, Synthetic Dioxide	3,011 short dry tons
Mercury	128,026 flasks (76-pounds)
Mica, Phlogopite Splittings	963,251 pounds
Nickel	37,214 short tons
Quartz Crystals, Natural	800,000 pounds
Rutile	39,200 short tons
Sapphire & Ruby	16,305,502 carats
Sebacic Acid	5,009,697 pounds
Silicon Carbide	28,774 short tons
Silver	83,951,492 troy ounces
Tin	141,278 metric tons
Vegetable Tannin, Chestnut	4,976 long tons
Vegetable Tannin, Quebracho	28,832 long tons
Vegetable Tannin, Wattle	15,000 long tons
Zinc	378,768 short tons

(b) CONDITIONS ON DISPOSAL.—The authority of the President under subsection (a) to dispose of materials stored in the stockpile may not be used unless and until the President submits to Congress a revised annual materials plan under section 11(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–2(b)) that—

(1) complies with the requirements of section 10(c) of such Act (50 U.S.C. 98h–1), as added by section 3314; and

(2) contains the certification of the Secretary of Defense that the disposal of such materials will not adversely affect the capability of the National Defense Stockpile to supply the strategic and critical materials necessary to meet the needs of the United States during a period of national emergency that requires a significant level of mobilization of the economy of the United States, including any reconstitution of the military and industrial capabilities necessary to meet the planning assump-

tions used by the Secretary of Defense under section 14(b) of such Act (50 U.S.C. 98h–5(b)).

(c) REQUIRED USE OF PREVIOUS DISPOSAL AUTHORITIES.—(1) The President shall complete the disposal of all quantities of materials in the National Defense Stockpile that—

(A) have been previously authorized for disposal by law; and

(B) have not been disposed of before the date of the enactment of this Act.

(2) The disposal of materials required by this subsection shall be completed before the end of the five-year period beginning on October 1, 1992, unless the President notifies Congress that the Market Impact Committee established under section 10(c) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–1(c)), as added by section 3314, determines that completion of the disposal of such materials during such period would result in the undue disruption of the usual markets of such materials. The notification shall also indicate the date on which the disposal of such materials will be completed.

(d) SPECIAL LIMITATION REGARDING SILVER.—(1) The disposal of silver under this section may only occur in the form of coins or, subject to paragraph (2), as material furnished by the Federal Government to a contractor for the use of the contractor in the performance of a Federal Government contract.

(2) A contractor receiving silver as Government furnished material shall pay the Federal Government the amount equal to the fair market value of the silver, as determined by the National Defense Stockpile Manager. The amount paid by the contractor for the silver shall be deposited in the National Defense Stockpile Transaction Fund.

(e) SPECIAL LIMITATION REGARDING CHROMITE AND MANGANESE ORES.—During fiscal year 1993, the disposal of chromite and manganese ores of metallurgical grade under subsection (a) may be made only for processing within the United States and the territories and possessions of the United States.

(f) SPECIAL LIMITATION REGARDING CHROMIUM AND MANGANESE FERRO.—The disposal of chromium ferro and manganese ferro under subsection (a) may not commence before October 1, 1995.

(g) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a) is in addition to any other disposal authority provided by law.

SEC. 3303. USE OF BARTER ARRANGEMENTS IN MODERNIZATION PROGRAM.

The President may enter into barter arrangements to dispose of materials under section 3302 in order to acquire strategic and critical materials for, or upgrade strategic and critical materials in, the National Defense Stockpile.

SEC. 3304. DEPOSIT OF PROCEEDS FROM DISPOSALS IN THE NATIONAL DEFENSE STOCKPILE FUND.

All moneys received from the sale of materials under section 3302 shall be deposited in the National Defense Stockpile Transaction Fund.

SEC. 3305. AUTHORIZED USES OF STOCKPILE FUNDS.

(a) USE FOR ACQUISITIONS AND OTHER PURPOSES.—During fiscal year 1993, the National Defense Stockpile Manager may obligate up to $66,000,000 of the funds in the National Defense Stockpile Transaction Fund (subject to such limitations as may be provided in appropriations Acts) for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) RESEARCH AND DEVELOPMENT PROGRAMS.—Of the amount specified in subsection (a), $25,000,000 may be obligated for materials development and research under subparagraph (G) of such section.

SEC. 3306. [50 U.S.C. 98h–1 note] ADVISORY COMMITTEE REGARDING OPERATION AND MODERNIZATION OF THE STOCKPILE.

(a) APPOINTMENT.—Not later than March 15, 1993, the President shall appoint an advisory committee under section 10(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–1(a)) to make recommendations to the President concerning the operation and modernization of the National Defense Stockpile.

(b) MEMBERSHIP.—The committee shall consist of members who have expertise regarding strategic and critical materials, including—

(1) employees of Federal agencies (including the Department of Defense, the Department of State, the Department of Commerce, the Department of Energy, the Department of the Treasury, the Department of the Interior, and the Federal Emergency Management Agency);

(2) representatives of mining, processing, and fabricating industries and consumers that would be affected by the acquisition of materials for the stockpile or the disposal of materials from the stockpile; and

(3) other interested persons or representatives of interested organizations.

SEC. 3307. SPECIAL RULE FOR 1993 REPORT ON STOCKPILE REQUIREMENTS.

In the report on stockpile requirements required to be submitted to Congress by January 15, 1993, pursuant to section 14 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–5), the Secretary of Defense shall include, in addition to the Secretary's recommendations with respect to stockpile requirements based upon the planning assumptions developed under subsection (b) of such section, the following information:

(1) A list of recommendations with respect to stockpile requirements that is based upon and consistent with the planning assumptions and scenarios that support—

(A) the defense capabilities and programs of the Armed Forces specified in the budget submitted to Congress under section 1105 of title 31, United States Code, for fiscal year 1994; and

(B) the future-years defense program submitted under section 221 of title 10, United States Code, with respect to that budget.

(2) An explanation of the reasons for any deviation between the Secretary's recommendations with respect to stock-

pile requirements prepared under section 14(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–5(a)) and the list of recommendations with respect to stockpile requirements required by paragraph (1).

* * * * * * *

Subtitle B—Programmatic Changes

* * * * * * *

SEC. 3315. CLARIFICATION OF THE STOCKPILE STATUS OF CERTAIN MATERIALS.

All materials purchased under section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and held in the Defense Production Act inventory as of June 30, 1992, are hereby transferred to the National Defense Stockpile and shall be managed, controlled, and subject to disposal by the National Defense Stockpile Manager as provided in the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a et seq.).

National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

PART A—CHANGES IN STOCKPILE AMOUNTS

SEC. 3301. AUTHORIZATION OF DISPOSALS.

(a) AUTHORITY.—During fiscal years 1992 and 1993, the National Defense Stockpile Manager may dispose of materials in the National Defense Stockpile in accordance with this section. The value of materials disposed of may not exceed $150,000,000 during each of such fiscal years. Such disposal may be made only as specified in subsection (b).

(b) MATERIALS AUTHORIZED TO BE DISPOSED.—Any disposal under subsection (a) shall be made—

(1) from quantities of materials in the National Defense Stockpile previously authorized for disposal by law, including the materials authorized for disposal in accordance with the table contained in section 3302(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1686); or

(2) in the case of materials in the National Defense Stockpile that have been determined to be excess to the current requirements of the stockpile, in accordance with the following table:

Material	Unit	Quantities
Bismuth	LB	500,000
Diamond, industrial, crushing bort	KT	10,000,000
Fluorspar, metallurgical grade	SDT	20,000
Graphite, Malagasy	ST	3,635

Manganese, battery grade	SDT	25,000
Manganese, chemical grade	SDT	173,000
Mercury	FL	15,000
Mica, muscovite block	LB	2,700,000
Mica, muscovite splittings	LB	1,100,000
Tin	MT	15,000

(c) ADDITIONAL AUTHORITY.—The disposal authority provided in subsection (a) is in addition to any other disposal authority provided by law.

(d) LIMITATION ON DISPOSALS.—The National Defense Stockpile Manager may dispose of materials under this section during fiscal years 1992 and 1993 only to the extent that the total amount received (or to be received) from such disposals for each of such fiscal years does not exceed the amount obligated from the National Defense Stockpile Transaction Fund during such fiscal year for the purposes authorized under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

SEC. 3302. AUTHORIZATION OF ACQUISITIONS.

(a) ACQUISITIONS.—During each of the fiscal years 1992 and 1993, the National Defense Stockpile Manager shall obligate $150,000,000 out of funds of the National Defense Stockpile Transaction Fund (subject to such limitations as may be provided in appropriations Acts) for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) RESEARCH AND DEVELOPMENT PROGRAMS.—Of the amount specified in subsection (a), $25,000,000 may be obligated during each of such fiscal years for materials development and research under clause (G) of such section.

National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

* * * * * * *

SEC. 3302. TRANSFER OF FUNDS

(a) TRANSFER.—The Secretary of Defense shall, subject to such limitations as may be provided in appropriations Acts, transfer $100,000,000 from the unobligated balance of the National Defense Stockpile Transaction Fund to the account established under section 2371(e) of title 10, United States Code.

(b) LIMITATION ON USE.—Funds transferred pursuant to subsection (a) may be used only for the purpose of—

(1) improving the quality and availability of materials stockpiled from time to time under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a et seq.); or

(2) developing new materials for the National Defense Stockpile.

National Defense Authorization Act for Fiscal Years 1990 and 1991

(Public Law 101–189, approved Nov. 20, 1989)

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

PART A—CHANGES IN STOCKPILE AMOUNTS

SEC. 3301. CHANGES IN STOCKPILE REQUIREMENTS

Pursuant to section 3(c)(4) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b(c)(4)), the National Defense Stockpile Manager may revise quantities of materials to be stockpiled under that Act in accordance with the following table:

Material	Current quantity	Revised quantity
Aluminum oxide, abrasive grain group.	638,000 short tons (contained)	374,000 short tons (contained)
Antimony	36,000 short tons	88,500 short tons
Asbestos, amosite	17,000 short tons	0 short tons
Bauxite, refractory	1,400,000 long calcined tons	1,240,000 long calcined tons
Bismuth	2,200,000 pounds	1,060,000 pounds
Chromite, refractory grade ore	850,000 short dry tons	695,000 short dry tons
Columbium group	4,850,000 pounds (contained)	12,520,000 pounds (contained)
Diamond, industrial group	29,730,000 carats	7,730,000 carats
Fluorspar, acid grade	1,400,000 short dry tons	900,000 short dry tons
Fluorspar, metallurgical grade	1,700,000 short dry tons	310,000 short dry tons
Graphite, natural, malagasy, crystalline.	20,000 short tons	14,200 short tons
Graphite, natural, other than Ceylon and Malagasy.	2,800 short tons	1,930 short tons
Manganese, battery grade group	87,000 short dry tons	50,000 short dry tons
Mica, muscovite block, stained and better.	6,200,000 pounds	2,500,000 pounds
Natural insulation fibers	1,500,000 pounds	0 pounds
Platinum group metals, iridium	98,000 troy ounces	86,000 troy ounces
Platinum group metals, palladium	3,000,000 troy ounces	2,150,000 troy ounces
Quartz crystals	600,000 pounds	240,000 pounds
Talc, steatite block and lump	28 short tons	0 short tons
Tungsten group	50,666,000 pounds (contained)	70,900,000 pounds (contained)

SEC. 3302. AUTHORIZED DISPOSALS

(a) AUTHORITY.—During fiscal years 1990 and 1991, the National Defense Stockpile Manager may dispose of materials in the National Defense Stockpile in accordance with this section. The value of materials disposed of may not exceed $180,000,000 during each of such fiscal years, and such disposal may be made only as specified in subsection (b).

(b) MATERIALS AUTHORIZED TO BE DISPOSED.—Any disposal under subsection (a) shall be made from quantities of materials in the National Defense Stockpile previously authorized for disposal by law or, in the case of materials in the National Defense Stockpile that have been determined to be excess to the current requirements of the stockpile, in accordance with the following table:

Material	Quantities
Asbestos, amosite	34,000 short tons
Bismuth	255,400 pounds
Diamond, industrial, crushing bort	8,000,000 carats
Fluorspar, metallurgical grade	15,000 short dry tons
Graphite, natural, Malagasy, crystalline	3,635 short tons
Graphite, natural, other than Ceylon and Malagasy	873 short tons
Mercury	15,000 flasks
Mica, muscovite block, stained and better	10,000 pounds
Silicon carbide	690 short tons
Talc, block and lump	28 short tons
Tin	5,000 metric tons

(c) ADDITIONAL AUTHORITY.—The disposal authority provided in subsection (a) is in addition to any other disposal authority provided by law.

(d) LIMITATION ON DISPOSALS DURING FISCAL YEARS 1990 AND 1991.—The National Defense Stockpile Manager may dispose of materials under this section during each of the fiscal years 1990 and 1991 only to the extent that the total amount received (or to be received) from such disposals for each such fiscal year does not exceed the amount obligated from the National Defense Stockpile Transaction Fund during such fiscal year for the purposes authorized under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

SEC. 3303. AUTHORIZATION OF ACQUISITIONS

(a) ACQUISITIONS.—During each of the fiscal years 1990 and 1991, the National Defense Stockpile Manager shall obligate $180,000,000 out of funds of the National Defense Stockpile Transaction Fund (subject to such limitations as may be provided in appropriations Acts) for the authorized uses of such funds under section 9(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)(2)).

(b) UPGRADE PROGRAMS.—Of the amount specified in subsection (a), at least $30,000,000 shall be obligated during each of such fiscal years for programs not already required by law for upgrading stockpile materials.

National Defense Authorization Act, Fiscal Year 1989

(Public Law 100–456, approved Sept. 29, 1988)

TITLE XV—NATIONAL DEFENSE STOCKPILE

SEC. 1501. AUTHORIZED DISPOSALS

(a) AUTHORITY.—Notwithstanding section 5(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d(b)) but subject to subsection (c), the President may during fiscal year 1989 dispose of materials in the National Defense Stockpile in accordance with this section. The value of the materials disposed of may not exceed $180,000,000 and may only be made as specified in subsection (b).

(b) MATERIALS AUTHORIZED TO BE DISPOSED.—Any disposal pursuant to the authority in subsection (a) shall be made from materials in the National Defense Stockpile previously authorized for disposal by law and from the following materials in the National Defense Stockpile, such materials having been determined to be excess in stockpile requirements:

Material	Quantities
Asbestos, chrysotile	2,100 short tons
Asbestos, crocidolite	36 short tons
Celestite	13,500 short dry tons
Iodine	772,000 pounds
Kyanite	1,200 short dry tons
Manganese dioxide, battery grade, natural ore	65,000 short dry tons
Mercury	7,500 flasks
Mica, muscovite block (S&L)	181,000 pounds
Mica, muscovite splittings	750,000 pounds
Mica, phlogopite splittings	589,000 pounds
Quartz	1,249,000 pounds
Silicon Carbide	44,000 short tons
Talc, block and lump	990 short tons
Talc, ground	1,100 short tons
Thorium nitrate	6,520,000 pounds
Tin	5,000 metric tons
Tungsten ores and concentrates	1,000,000 pounds
Vegetable tannin chestnut	3,500 long tons
Vegetable tannin quebracho	77,000 long tons

(c) DISPOSALS DURING FISCAL YEAR 1989.—The President may dispose of materials under this section during fiscal year 1989 only to the extent that the total amount received (or to be received) from such disposals does not exceed the amount expended from the National Defense Stockpile Transaction Fund during fiscal year 1989 for purposes authorized under section 9(b)(2) of such Act.

SEC. 1502. AUTHORIZATION OF ACQUISITIONS

(a) ACQUISITIONS.—During fiscal year 1989, the President shall obligate $180,000,000 out of the funds of the National Defense Stockpile Transaction Fund (subject to such limitations as may be provided in appropriations Acts) for the following purposes:

(1) The acquisition of strategic and critical materials under section 6(a)(1) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e(a)(1)).

(2) Transportation, storage, and other incidental expenses related to such acquisition.

(3) The upgrading of stockpile materials under section 6(a)(3) of such Act (50 U.S.C. 98e(a)(3)) and evaluations, tests, and other incidental expenses related to such upgrades.

(4) Other authorized uses of such funds under section 9(b)(2) of such Act (50 U.S.C. 98h(b)(2)).

(b) NEW UPGRADE PROGRAMS.—Of the amount specified in subsection (a), at least $20,000,000 shall be obligated to initiate new programs for upgrading stockpile materials. The Stockpile Manager shall submit to Congress by October 1, 1988, a report containing a plan for the use of such $20,000,000 for upgrading stockpile materials.

National Defense Authorization Act for Fiscal Year 1987

(Public Law 99–661, approved Nov. 14, 1986)

TITLE II—NATIONAL DEFENSE STOCKPILE

* * * * * * *

SEC. 3204. AUTHORIZED DISPOSALS FROM NATIONAL DEFENSE STOCKPILE

(a) IN GENERAL.—(1) The President is authorized to dispose of the following quantities of materials that are currently held in the National Defense Stockpile (established by section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b)) and that are hereby determined to be excess to the current requirements of the stockpile:

Antimony	1,500 short tons
Diamonds, Industrial Stone	1,125,000 carats
Iodine	800,000 pounds
Mercury	3,700 flasks
Mica, Muscovite Film	3,000 pounds
Mica, Muscovite Splittings	262,000 pounds
Silicon Carbide	7,600 short tons
Silver (Coinage Program Only)	3,000,000 troy ounces
Tannin, Chestnut	1,000 long tons
Tannin, Quebracho	4,000 long tons
Thorium Nitrate	10,000 pounds
Tin	4,000 metric tons
Tungsten	1,900,000 pounds of tungsten metal equivalent

(2) Authority provided by paragraph (1) is in addition to any other authority provided by law to dispose of materials from the National Defense Stockpile.

(b) SPECIAL DISPOSAL AUTHORITY.—During fiscal year 1987, the President may contract to carry out authorized disposals of materials from the National Defense Stockpile without regard to the limitation in section 5(b)(2) of the Strategic and Critical Materials Stock Piling Act, but only to the extent that the total amount received (or to be received) from such disposals does not exceed the amount obligated from the National Defense Stockpile Transaction Fund during such fiscal year for purposes authorized under section 9(b)(2) of such Act (as amended by section 3203).

SEC. 3205. CONVERSION OF CHROMIUM AND MANGANESE ORE TO HIGH CARBON FERROCHROMIUM AND HIGH CARBON FERROMANGANESE

(a) REQUIRED UPGRADING.—During each of fiscal years 1987 through 1993, the President shall—

(1) obtain bids from domestic producers of high carbon ferrochromium and of high carbon ferromanganese; and

(2) award contracts for the conversion of chromium and manganese ores held in the National Defense Stockpile into high carbon ferrochromium and high carbon ferromanganese, respectively.

(b) QUANTITIES TO BE UPGRADED.—(1) Contracts awarded under subsection (a) shall provide for the addition of not less than 53,500 short tons of high carbon ferrochromium and not less than 67,500 short tons of high carbon ferromanganese to the National Defense Stockpile during each of the fiscal years covered by subsection (a).

(2) If, during any fiscal year referred to in subsection (a), the minimum quantity of high carbon ferrochromium or high carbon ferromanganese to be added to the National Defense Stockpile, as required by paragraph (1), is not met, the quantity of such material to be added to the stockpile in the next fiscal year shall be increased by the quantity of the deficiency.

(c) SEVEN-YEAR MINIMUM QUANTITIES.—The total quantities of high carbon ferrochromium and high carbon ferromanganese to be added to the National Defense Stockpile over the seven fiscal years referred to in subsection (a) shall be as follows:

(1) High carbon ferrochromium, 374,000 short tons.

(2) High carbon ferromanganese, 472,000 short tons.

(d) DEFINITION.—In this section, the term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

d. Sale of Naval Petroleum Reserve Numbered 1

National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE XXXIV—NAVAL PETROLEUM RESERVES

* * * * * * *

Subtitle B—Sale of Naval Petroleum Reserve

SEC. 3411. [10 U.S.C. 7420 note] DEFINITIONS.

For purposes of this subtitle:

(1) The terms "Naval Petroleum Reserve Numbered 1" and "reserve" mean Naval Petroleum Reserve Numbered 1, commonly referred to as the Elk Hills Unit, located in Kern County, California, and established by Executive order of the President, dated September 2, 1912.

(2) The term "naval petroleum reserves" has the meaning given that term in section 7420(2) of title 10, United States Code, except that the term does not include Naval Petroleum Reserve Numbered 1.

(3) The term "unit plan contract" means the unit plan contract between equity owners of the lands within the boundaries of Naval Petroleum Reserve Numbered 1 entered into on June 19, 1944.

(4) The term "effective date" means the date of the enactment of this Act.

(5) The term "Secretary" means the Secretary of Energy.

(6) The term "appropriate congressional committees" means the Committee on Armed Services of the Senate and the Committee on Armed Services and the Committee on Commerce of the House of Representatives.

SEC. 3412. [10 U.S.C. 7420 note] SALE OF NAVAL PETROLEUM RESERVE NUMBERED 1.

(a) SALE OF RESERVE REQUIRED.—Subject to section 3414, not later than two years after the effective date, the Secretary of Energy shall enter into one or more contracts for the sale of all right, title, and interest of the United States in and to all lands owned or controlled by the United States inside Naval Petroleum Reserve Numbered 1. Chapter 641 of title 10, United States Code, shall not apply to the sale of the reserve.

(b) EQUITY FINALIZATION.—(1) Not later than eight months after the effective date, the Secretary shall finalize equity interests of the known oil and gas zones in Naval Petroleum Reserve Numbered 1 in the manner provided by this subsection.

(2) The Secretary shall retain the services of an independent petroleum engineer, mutually acceptable to the equity owners, who shall prepare a recommendation on final equity figures. The Secretary may accept the recommendation of the independent petroleum engineer for final equity in each known oil and gas zone and establish final equity interest in Naval Petroleum Reserve Numbered 1 in accordance with the recommendation, or the Secretary may use such other method to establish final equity interest in the reserve as the Secretary considers appropriate.

(3) If, on the effective date, there is an ongoing equity redetermination dispute between the equity owners under section 9(b) of the unit plan contract, the dispute shall be resolved in the manner provided in the unit plan contract within eight months after the effective date. The resolution shall be considered final for all purposes under this section.

(c) NOTICE OF SALE.—Not later than two months after the effective date, the Secretary shall publish a notice of intent to sell Naval Petroleum Reserve Numbered 1. The Secretary shall make all technical, geological, and financial information relevant to the sale of the reserve available to all interested and qualified buyers upon request. The Secretary, in consultation with the Administrator of General Services, shall ensure that the sale process is fair and open to all interested and qualified parties.

(d) ESTABLISHMENT OF MINIMUM SALE PRICE.—(1) Not later than seven months after the effective date, the Secretary shall retain the services of five independent experts in the valuation of oil and gas fields to conduct separate assessments, in a manner consistent with commercial practices, of the value of the interest of the United States in Naval Petroleum Reserve Numbered 1. The independent experts shall complete their assessments within 11 months after the effective date. In making their assessments, the independent experts shall consider (among other factors)—

(A) all equipment and facilities to be included in the sale;

(B) the estimated quantity of petroleum and natural gas in the reserve; and

(C) the net present value of the anticipated revenue stream that the Secretary and the Director of the Office of Management and Budget jointly determine the Treasury would receive from the reserve if the reserve were not sold, adjusted for any anticipated increases in tax revenues that would result if the reserve were sold.

(2) The independent experts retained under paragraph (1) shall also determine and submit to the Secretary the estimated total amount of the cost of any environmental restoration and remediation necessary at the reserve. The Secretary shall report the estimate to the Director of the Office of Management and Budget, the Secretary of the Treasury, and Congress.

(3) The Secretary, in consultation with the Director of the Office of Management and Budget, shall set the minimum acceptable price for the reserve. The Secretary may not set the minimum acceptable price below the higher of—

(A) the average of the five assessments prepared under paragraph (1); and

(B) the average of three assessments after excluding the high and low assessments.

(e) ADMINISTRATION OF SALE; DRAFT CONTRACT.—(1) Not later than two months after the effective date, the Secretary shall retain the services of an investment banker or an appropriate equivalent financial adviser to independently administer, in a manner consistent with commercial practices and in a manner that maximizes sale proceeds to the Government, the sale of Naval Petroleum Reserve Numbered 1 under this section. Costs and fees of retaining the investment banker or financial adviser may be paid out of the proceeds of the sale of the reserve.

(2) Not later than 11 months after the effective date, the investment banker or financial adviser retained under paragraph (1) shall complete a draft contract or contracts for the sale of Naval Petroleum Reserve Numbered 1, which shall accompany the solicitation of offers and describe the terms and provisions of the sale of the interest of the United States in the reserve.

(3) The draft contract or contracts shall identify—

(A) all equipment and facilities to be included in the sale; and

(B) any potential claim or liability (including liability for environmental restoration and remediation), and the extent of any such claim or liability, for which the United States is responsible under subsection (g).

(4) The draft contract or contracts, including the terms and provisions of the sale of the interest of the United States in the reserve, shall be subject to review and approval by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget. Each of those officials shall complete the review of, and approve or disapprove, the draft contract or contracts not later than 12 months after the effective date.

(f) SOLICITATION OF OFFERS.—(1) Not later than 13 months after the effective date, the Secretary shall publish the solicitation of offers for Naval Petroleum Reserve Numbered 1.

(2) Not later than 18 months after the effective date, the Secretary shall identify the highest responsible offer or offers for purchase of the interest of the United States in Naval Petroleum Reserve Numbered 1 that, in total, meet or exceed the minimum acceptable price determined under subsection (d)(3).

(3) The Secretary shall take such action immediately after the effective date as is necessary to obtain from an independent petroleum engineer within 10 months after that date a reserve report prepared in a manner consistent with commercial practices. The Secretary shall use the reserve report in support of the preparation of the solicitation of offers for the reserve.

(g) FUTURE LIABILITIES.—To effectuate the sale of the interest of the United States in Naval Petroleum Reserve Numbered 1, the Secretary may extend such indemnities and warranties as the Secretary considers reasonable and necessary to protect the purchaser from claims arising from the ownership in the reserve by the United States.

(h) MAINTAINING PRODUCTION.—Until the sale of Naval Petroleum Reserve Numbered 1 is completed under this section, the Secretary shall continue to produce the reserve at the maximum daily

oil or gas rate from a reservoir, which will permit maximum economic development of the reservoir consistent with sound oil field engineering practices in accordance with section 3 of the unit plan contract.

(i) NONCOMPLIANCE WITH DEADLINES.—At any time during the two-year period beginning on the effective date, if the Secretary determines that the actions necessary to complete the sale of the reserve within that period are not being taken or timely completed, the Secretary shall transmit to the appropriate congressional committees a written notification of that determination together with a plan setting forth the actions that will be taken to ensure that the sale of the reserve will be completed within that period. The Secretary shall consult with the Director of the Office of Management and Budget in preparing the plan for submission to the committees.

(j) OVERSIGHT.—The Comptroller General shall monitor the actions of the Secretary relating to the sale of the reserve and report to the appropriate congressional committees any findings on such actions that the Comptroller General considers appropriate to report to the committees.

(k) ACQUISITION OF SERVICES.—The Secretary may enter into contracts for the acquisition of services required under this section under the authority of paragraph (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)), except that the notification required under subparagraph (B) of such paragraph for each contract shall be submitted to Congress not less than 7 days before the award of the contract.

SEC. 3413. [10 U.S.C. 7420 note] EFFECT OF SALE OF RESERVE.

(a) EFFECT ON EXISTING CONTRACTS.—(1) In the case of any contract, in effect on the effective date, for the purchase of production from any part of the United States' share of Naval Petroleum Reserve Numbered 1, the sale of the interest of the United States in the reserve shall be subject to the contract for a period of three months after the closing date of the sale or until termination of the contract, whichever occurs first. The term of any contract entered into after the effective date for the purchase of the production shall not exceed the anticipated closing date for the sale of the reserve.

(2) The Secretary shall exercise the termination procedures provided in the contract between the United States and Bechtel Petroleum Operation, Inc., Contract Number DE–ACO1–85FE60520 so that the contract terminates not later than the date of closing of the sale of Naval Petroleum Reserve Numbered 1 under section 3412.

(3) The Secretary shall exercise the termination procedures provided in the unit plan contract so that the unit plan contract terminates not later than the date of closing of the sale of reserve.

(b) EFFECT ON ANTITRUST LAWS.—Nothing in this subtitle shall be construed to alter the application of the antitrust laws of the United States to the purchaser or purchasers (as the case may be) of Naval Petroleum Reserve Numbered 1 or to the lands in the reserve subject to sale under section 3412 upon the completion of the sale.

(c) PRESERVATION OF PRIVATE RIGHT, TITLE, AND INTEREST.—Nothing in this subtitle shall be construed to adversely affect the ownership interest of any other entity having any right, title, and interest in and to lands within the boundaries of Naval Petroleum Reserve Numbered 1 and which are subject to the unit plan contract.

(d) TRANSFER OF OTHERWISE NONTRANSFERABLE PERMIT.—The Secretary may transfer to the purchaser or purchasers (as the case may be) of Naval Petroleum Reserve Numbered 1 the incidental take permit regarding the reserve issued to the Secretary by the United States Fish and Wildlife Service and in effect on the effective date if the Secretary determines that transfer of the permit is necessary to expedite the sale of the reserve in a manner that maximizes the value of the sale to the United States. The transferred permit shall cover the identical activities, and shall be subject to the same terms and conditions, as apply to the permit at the time of the transfer.

SEC. 3414. [10 U.S.C. 7420 note] CONDITIONS ON SALE PROCESS.

(a) NOTICE REGARDING SALE CONDITIONS.—The Secretary may not enter into any contract for the sale of Naval Petroleum Reserve Numbered 1 under section 3412 until the end of the 31-day period beginning on the date on which the Secretary submits to the appropriate congressional committees a written notification—

(1) describing the conditions of the proposed sale; and

(2) containing an assessment by the Secretary of whether it is in the best interests of the United States to sell the reserve under such conditions.

(b) AUTHORITY TO SUSPEND SALE.—(1) The Secretary may suspend the sale of Naval Petroleum Reserve Numbered 1 under section 3412 if the Secretary and the Director of the Office of Management and Budget jointly determine that—

(A) the sale is proceeding in a manner inconsistent with achievement of a sale price that reflects the full value of the reserve; or

(B) a course of action other than the immediate sale of the reserve is in the best interests of the United States.

(2) Immediately after making a determination under paragraph (1) to suspend the sale of Naval Petroleum Reserve Numbered 1, the Secretary shall submit to the appropriate congressional committees a written notification describing the basis for the determination and requesting a reconsideration of the merits of the sale of the reserve.

(c) EFFECT OF RECONSIDERATION NOTICE.—After the Secretary submits a notification under subsection (b), the Secretary may not complete the sale of Naval Petroleum Reserve Numbered 1 under section 3412 or any other provision of law unless the sale of the reserve is authorized in an Act of Congress enacted after the date of the submission of the notification.

SEC. 3415. [10 U.S.C. 7420 note] TREATMENT OF STATE OF CALIFORNIA CLAIM REGARDING RESERVE.

(a) RESERVATION OF FUNDS.—After the costs incurred in the conduct of the sale of Naval Petroleum Reserve Numbered 1 under section 3412 are deducted, nine percent of the remaining proceeds

from the sale of the reserve shall be reserved in a contingent fund in the Treasury for payment to the State of California for the Teachers' Retirement Fund of the State in the event that, and to the extent that, the claims of the State against the United States regarding production and proceeds of sale from Naval Petroleum Reserve Numbered 1 are—

(1) settled by agreement with the United States under subsection (c); or

(2) finally resolved in favor of the State by a court of competent jurisdiction, if a settlement agreement is not reached.

(b) DISPOSITION OF FUNDS.—In such amounts as may be provided in appropriation Acts, amounts in the contingent fund shall be available for paying a claim described in subsection (a). After final disposition of the claims, any unobligated balance in the contingent fund shall be credited to the general fund of the Treasury. If no payment is made from the contingent fund within 10 years after the effective date, amounts in the contingent fund shall be credited to the general fund of the Treasury.

(c) SETTLEMENT OFFER.—Not later than 30 days after the date of the sale of Naval Petroleum Reserve Numbered 1 under section 3412, the Secretary shall offer to settle all claims of the State of California against the United States with respect to lands in the reserve located in sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, and production or proceeds of sale from the reserve, in order to provide proper compensation for the State's claims. The Secretary shall base the amount of the offered settlement payment from the contingent fund on the fair value for the State's claims, including the mineral estate, not to exceed the amount reserved in the contingent fund.

(d) RELEASE OF CLAIMS.—Acceptance of the settlement offer made under subsection (c) shall be subject to the condition that all claims against the United States by the State of California for the Teachers' Retirement Fund of the State be released with respect to lands in Naval Petroleum Reserve Numbered 1, including sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, or production or proceeds of sale from the reserve.

SEC. 3416. [10 U.S.C. 7420 note] STUDY OF FUTURE OF OTHER NAVAL PETROLEUM RESERVES.

(a) STUDY REQUIRED.—The Secretary of Energy shall conduct a study to determine which of the following options, or combinations of options, regarding the naval petroleum reserves (other than Naval Petroleum Reserve Numbered 1) would maximize the value of the reserves to the United States:

(1) Retention and operation of the naval petroleum reserves by the Secretary under chapter 641 of title 10, United States Code.

(2) Transfer of all or a part of the naval petroleum reserves to the jurisdiction of another Federal agency for administration under chapter 641 of title 10, United States Code.

(3) Transfer of all or a part of the naval petroleum reserves to the Department of the Interior for leasing in accordance with the Mineral Leasing Act (30 U.S.C. 181 et seq.) and

surface management in accordance with the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.).

(4) Sale of the interest of the United States in the naval petroleum reserves.

(b) CONDUCT OF STUDY.—The Secretary shall retain an independent petroleum consultant to conduct the study.

(c) CONSIDERATIONS UNDER STUDY.—An examination of the value to be derived by the United States from the transfer or sale of the naval petroleum reserves shall include an assessment and estimate of the fair market value of the interest of the United States in the naval petroleum reserves. The assessment and estimate shall be made in a manner consistent with customary property valuation practices in the oil and gas industry.

(d) REPORT AND RECOMMENDATIONS REGARDING STUDY.—Not later than June 1, 1996, the Secretary shall submit to Congress a report describing the results of the study and containing such recommendations (including proposed legislation) as the Secretary considers necessary to implement the option, or combination of options, identified in the study that would maximize the value of the naval petroleum reserves to the United States.

e. Disposal of Other Naval Petroleum Reserves

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE XXXIV—NAVAL PETROLEUM RESERVES

SEC. 3401. [10 U.S.C. 7420 note] DEFINITIONS.

In this title:

(1) The term "naval petroleum reserves" has the meaning given the term in section 7420(2) of title 10, United States Code.

(2) The term "Naval Petroleum Reserve Numbered 2" means the naval petroleum reserve, commonly referred to as the Buena Vista unit, that is located in Kern County, California, and was established by Executive order of the President, dated December 13, 1912.

(3) The term "Naval Petroleum Reserve Numbered 3" means the naval petroleum reserve, commonly referred to as the Teapot Dome unit, that is located in the State of Wyoming and was established by Executive order of the President, dated April 30, 1915.

(4) The term "Oil Shale Reserve Numbered 2" means the naval petroleum reserve that is located in the State of Utah and was established by Executive order of the President, dated December 6, 1916.

(5) The term "antitrust laws" has the meaning given the term in section 1(a) of the Clayton Act (15 U.S.C. 12(a)), except that the term also includes—

(A) the Act of June 19, 1936 (15 U.S.C. 13 et seq.; commonly known as the Robinson-Patman Act); and

(B) section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that such section applies to unfair methods of competition.

(6) The term "petroleum" has the meaning given the term in section 7420(3) of title 10, United States Code.

SEC. 3402. [10 U.S.C. 7420 note] AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT.—There are hereby authorized to be appropriated to the Secretary of Energy $22,500,000 for fiscal year 1999 for the purpose of carrying out—

(1) activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves;

(2) closeout activities at Naval Petroleum Reserve Numbered 1 upon the sale of that reserve under subtitle B of title

XXXIV of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 7420 note); and

(3) activities under this title relating to the disposition of Naval Petroleum Reserve Numbered 2, Naval Petroleum Reserve Numbered 3, and Oil Shale Reserve Numbered 2.

(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

SEC. 3403. [10 U.S.C. 7420 note] DISPOSAL OF NAVAL PETROLEUM RESERVE NUMBERED 2.

(a) DISPOSAL OF FORD CITY LOTS AUTHORIZED.—(1) Subject to section 3406, the Secretary of Energy may dispose of the portion of Naval Petroleum Reserve Numbered 2 that is located within the town lots in Ford City, California, which are identified as "Drill Sites Numbered 3A, 4, 6, 9A, 20, 22, 24, and 26" and described in the document entitled "Ford City Drill Site Locations—NPR–2," and accompanying maps on file in the office of the Deputy Assistant Secretary for Naval Petroleum and Oil Shale Reserves of the Department of Energy.

(2) The Secretary of Energy shall carry out the disposal authorized by paragraph (1) by competitive sale or lease consistent with commercial practices, by transfer to another Federal agency or a public or private entity, or by such other means as the Secretary considers appropriate. Any competitive sale or lease under this subsection shall provide for the disposal of all right, title, and interest of the United States in the property to be conveyed. The Secretary of Energy may use the authority provided by the Act of June 14, 1926 (43 U.S.C. 869 et seq.; commonly known as the Recreation and Public Purposes Act), in the same manner and to the same extent as the Secretary of the Interior, to dispose of the portion of Naval Petroleum Reserve Numbered 2 described in paragraph (1).

(3) Section 2696(a) of title 10, United States Code, regarding the screening of real property for further Federal use before disposal, shall apply to the disposal authorized by paragraph (1).

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION AUTHORIZED.—(1) The Secretary of Energy shall continue to administer Naval Petroleum Reserve Numbered 2 (other than the portion of the reserve authorized for disposal under subsection (a)) in accordance with chapter 641 of title 10, United States Code, until such time as the Secretary makes a determination to abandon oil and gas operations in Naval Petroleum Reserve Numbered 2 in accordance with commercial operating practices.

(2) After oil and gas operations are abandoned in Naval Petroleum Reserve Numbered 2, the Secretary of Energy may transfer to the Secretary of the Interior administrative jurisdiction and control over all public domain lands included within Naval Petroleum Reserve Numbered 2 (other than the portion of the reserve authorized for disposal under subsection (a)) for management in accordance with the general land laws.

(c) RELATIONSHIP TO ANTITRUST LAWS.—This section does not modify, impair, or supersede the operation of the antitrust laws.

SEC. 3404. [10 U.S.C. 7420 note] DISPOSAL OF NAVAL PETROLEUM RESERVE NUMBERED 3.

(a) ADMINISTRATION PENDING TERMINATION OF OPERATIONS.—The Secretary of Energy shall continue to administer Naval Petroleum Reserve Numbered 3 in accordance with chapter 641 of title 10, United States Code, until such time as the Secretary makes a determination to abandon oil and gas operations in Naval Petroleum Reserve Numbered 3 in accordance with commercial operating practices.

(b) DISPOSAL AUTHORIZED.—After oil and gas operations are abandoned in Naval Petroleum Reserve Numbered 3, the Secretary of Energy may dispose of the reserve as provided in this subsection. Subject to section 3406, the Secretary shall carry out any such disposal of the reserve by sale or lease or by transfer to another Federal agency. Any sale or lease shall provide for the disposal of all right, title, and interest of the United States in the property to be conveyed and shall be conducted in accordance with competitive procedures consistent with commercial practices, as established by the Secretary.

(c) RELATIONSHIP TO ANTITRUST LAWS.—This section does not modify, impair, or supersede the operation of the antitrust laws.

SEC. 3405. [10 U.S.C. 7420 note] DISPOSAL OF OIL SHALE RESERVE NUMBERED 2.

(a) DEFINITIONS.—In this section:

(1) NOSR–2.—The term "NOSR–2" means Oil Shale Reserve Numbered 2, as identified on a map on file in the Office of the Secretary of the Interior.

(2) MOAB SITE.—The term "Moab site" means the Moab uranium milling site located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA–917.

(3) MAP.—The term "map" means the map depicting the boundaries of NOSR–2, to be kept on file and available for public inspection in the offices of the Department of the Interior.

(4) TRIBE.—The term "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Indian Reservation.

(5) TRUSTEE.—The term "'Trustee" means the Trustee of the Moab Mill Reclamation Trust.

(b) CONVEYANCE.—(1) Except as provided in paragraph (2) and subsection (e), all right, title, and interest of the United States in and to all Federal lands within the exterior boundaries of NOSR–2 (including surface and mineral rights) are hereby conveyed to the Tribe in fee simple. The Secretary of Energy shall execute and file in the appropriate office a deed or other instrument effectuating the conveyance made by this section.

(2) The conveyance under paragraph (1) does not include the following:

(A) The portion of the bed of Green River contained entirely within NOSR–2, as depicted on the map.

(B) The land (including surface and mineral rights) to the west of the Green River within NOSR–2, as depicted on the map.

(C) A ¼ mile scenic easement on the east side of the Green River within NOSR–2.

(c) CONDITIONS ON CONVEYANCE.—(1) The conveyance under subsection (b) is subject to valid existing rights in effect on the day before the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

(2) On completion of the conveyance under subsection (b), the United States relinquishes all management authority over the conveyed land, including tribal activities conducted on the land.

(3) The land conveyed to the Tribe under subsection (b) shall not revert to the United States for management in trust status.

(4) The reservation of the easement under subsection (b)(2)(C) shall not affect the right of the Tribe to use and maintain access to the Green River through the use of the road within the easement, as depicted on the map.

(5) Each withdrawal that applies to NOSR–2 and that is in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 is revoked to the extent that the withdrawal applies to NOSR–2.

(6) Notwithstanding that the land conveyed to the Tribe under subsection (b) shall not be part of the reservation of the Tribe, such land shall be deemed to be part of the reservation of the Tribe for the purposes of criminal and civil jurisdiction.

(d) ADMINISTRATION OF UNCONVEYED LAND AND INTERESTS IN LAND.—(1) The land and interests in land excluded by subparagraphs (A) and (B) of subsection (b)(2) from conveyance under subsection (b) shall be administered by the Secretary of the Interior in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(2) Not later than three years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, the Secretary of the Interior shall submit to Congress a land use plan for the management of the land and interests in land referred to in paragraph (1).

(3) There are authorized to be appropriated to the Secretary of the Interior such sums as are necessary to carry out this subsection.

(e) ROYALTY.—(1) Notwithstanding the conveyance under subsection (b), the United States retains a nine percent royalty interest in the value of any oil, gas, other hydrocarbons, and all other minerals that are produced, saved, and sold from the conveyed land during the period beginning on the date of the conveyance and ending on the date the Secretary of Energy releases the royalty interest under subsection (i).

(2) The royalty payments shall be made by the Tribe or its designee to the Secretary of Energy during the period that the oil, gas, hydrocarbons, or minerals are being produced, saved, sold, or extracted. The Secretary of Energy shall retain and use the payments in the manner provided in subsection (i)(3).

(3) The royalty interest retained by the United States under this subsection does not include any development, production, marketing, and operating expenses.

(4) The Tribe shall submit to the Secretary of Energy and to Congress an annual report on resource development and other ac-

tivities of the Tribe concerning the conveyance under subsection (b).

(5) Not later than five years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and every five years thereafter, the Tribe shall obtain an audit of all resource development activities of the Tribe concerning the conveyance under subsection (b), as provided under chapter 75 of title 31, United States Code. The results of each audit under this paragraph shall be included in the next annual report submitted under paragraph (4).

(f) RIVER MANAGEMENT.—(1) The Tribe shall manage, under Tribal jurisdiction and in accordance with ordinances adopted by the Tribe, land of the Tribe that is adjacent to, and within ¼ mile of, the Green River in a manner that—

(A) maintains the protected status of the land; and

(B) is consistent with the government-to-government agreement and in the memorandum of understanding dated February 11, 2000, as agreed to by the Tribe and the Secretary of the Interior.

(2) An ordinance referred to in paragraph (1) shall not impair, limit, or otherwise restrict the management and use of any land that is not owned, controlled, or subject to the jurisdiction of the Tribe.

(3) An ordinance adopted by the Tribe and referenced in the government-to-government agreement may not be repealed or amended without the written approval of both the Tribe and the Secretary of the Interior.

(g) PLANT SPECIES.—(1) In accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior, in a manner consistent with levels of legal protection in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, the Tribe shall protect, under ordinances adopted by the Tribe, any plant species that is—

(A) listed as an endangered species or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

(B) located or found on the NOSR–2 land conveyed to the Tribe.

(2) The protection described in paragraph (1) shall be performed solely under tribal jurisdiction.

(h) HORSES.—(1) The Tribe shall manage, protect, and assert control over any horse not owned by the Tribe or tribal members that is located or found on the NOSR–2 land conveyed to the Tribe in a manner that is consistent with Federal law governing the management, protection, and control of horses in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

(2) The management, control, and protection of horses described in paragraph (1) shall be performed solely—

(A) under tribal jurisdiction; and

(B) in accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior.

(i) REMEDIAL ACTION AT MOAB SITE.—(1)(A) The Secretary of Energy shall prepare a plan for remediation, including ground water restoration, of the Moab site in accordance with title I of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7911 et seq.). The Secretary of Energy shall enter into arrangements with the National Academy of Sciences to obtain the technical advice, assistance, and recommendations of the National Academy of Sciences in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants. If the Secretary prepares a remediation plan that is not consistent with the recommendations of the National Academy of Sciences, the Secretary shall submit to Congress a report explaining the reasons for deviation from the National Academy of Sciences' recommendations.

(B) The remediation plan required by subparagraph (A) shall be completed not later than one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and the Secretary of Energy shall commence remedial action at the Moab site as soon as practicable after the completion of the plan.

(C) The license for the materials at the Moab site issued by the Nuclear Regulatory Commission shall terminate one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, unless the Secretary of Energy determines that the license may be terminated earlier. Until the license is terminated, the Trustee, subject to the availability of funds appropriated specifically for a purpose described in clauses (i) through (iii) or made available by the Trustee from the Moab Mill Reclamation Trust, may carry out—

(i) interim measures to reduce or eliminate localized high ammonia concentrations in the Colorado River, identified by the United States Geological Survey in a report dated March 27, 2000;

(ii) activities to dewater the mill tailings at the Moab site; and

(iii) other activities related to the Moab site, subject to the authority of the Nuclear Regulatory Commission and in consultation with the Secretary of Energy.

(D) As part of the remediation plan for the Moab site required by subparagraph (A), the Secretary of Energy shall develop, in consultation with the Trustee, the Nuclear Regulatory Commission, and the State of Utah, an efficient and legal means for transferring all responsibilities and title to the Moab site and all the materials therein from the Trustee to the Department of Energy.

(2) The Secretary of Energy shall limit the amounts expended in carrying out the remedial action under paragraph (1) to—

(A) amounts specifically appropriated for the remedial action in an appropriation Act; and

(B) other amounts made available for the remedial action under this subsection.

(3)(A) The royalty payments received by the Secretary of Energy under subsection (e) shall be available to the Secretary, with-

out further appropriation, to carry out the remedial action under paragraph (1) until such time as the Secretary determines that all costs incurred by the United States to carry out the remedial action (other than costs associated with long-term monitoring) have been paid.

(B) Upon making the determination referred to in subparagraph (A), the Secretary of Energy shall transfer all remaining royalty amounts to the general fund of the Treasury and release to the Tribe the royalty interest retained by the United States under subsection (e).

(4)(A) Funds made available to the Department of Energy for national security activities shall not be used to carry out the remedial action under paragraph (1), except that the Secretary of Energy may use such funds for program direction directly related to the remedial action.

(B) There are authorized to be appropriated to the Secretary of Energy to carry out the remedial action under paragraph (1) such sums as are necessary.

(5) If the Moab site is sold after the date on which the Secretary of Energy completes the remedial action under paragraph (1), the seller shall pay to the Secretary of Energy, for deposit in the general fund of the Treasury, the portion of the sale price that the Secretary determines resulted from the enhancement of the value of the Moab site as a result of the remedial action. The enhanced value of the Moab site shall be equal to the difference between—

(A) the fair market value of the Moab site on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, based on information available on that date; and

(B) the fair market value of the Moab site, as appraised on completion of the remedial action.

SEC. 3406. [10 U.S.C. 7420 note] ADMINISTRATION.

(a) PROTECTION OF EXISTING RIGHTS.—At the discretion of the Secretary of Energy, the disposal of property under this title shall be subject to any contract related to the United States ownership interest in the property in effect at the time of disposal, including any lease agreement pertaining to the United States interest in Naval Petroleum Reserve Numbered 2.

(b) DEPOSIT OF RECEIPTS.—Notwithstanding any other law, all monies received by the United States from the disposal of property under this title, including any monies received from a lease entered into under this title, shall be deposited in the general fund of the Treasury.

(c) TREATMENT OF ROYALTIES.—Any petroleum accruing to the United States as royalty from any lease of lands transferred under this title shall be delivered to the United States, or shall be paid for in money, as the Secretary of the Interior may elect.

(d) ELEMENTS OF LEASE.—A lease under this title may provide for the exploration for, and development and production of, petroleum, other than petroleum in the form of oil shale.

(e) WAIVER OF REQUIREMENTS REGARDING CONSULTATION AND APPROVAL.—Section 7431 of title 10, United States Code, shall not apply to the disposal of property under this title.

(f) OIL SHALE RESERVE NUMBERED 2.—This section does not apply to the transfer of Oil Shale Reserve Numbered 2 under section 3405.

7. RELATIONS WITH NATO COUNTRIES AND OTHER NATIONS

(Including Provisions Relating to the Presence of United States Armed Forces in the Balkans and Cooperative Threat Reduction with States of the Former Soviet Union)

---

a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE XII—MATTERS RELATING TO OTHER NATIONS

* * * * * * *

Subtitle B—Matters Relating to the Balkans

* * * * * * *

SEC. 1212. SITUATION IN THE BALKANS.

(a) ESTABLISHMENT OF NATO BENCHMARKS FOR WITHDRAWAL OF FORCES FROM KOSOVO.—The President shall develop, not later than May 31, 2001, militarily significant benchmarks for conditions that would achieve a sustainable peace in Kosovo and ultimately allow for the withdrawal of the United States military presence in Kosovo. Congress urges the President to seek concurrence among member nations of the North Atlantic Treaty Organization in the development of those benchmarks.

(b) COMPREHENSIVE POLITICAL-MILITARY STRATEGY.—(1) The President—

(A) shall develop a comprehensive political-military strategy for addressing the political, economic, humanitarian, and military issues in the Balkans; and

(B) shall establish near-term, mid-term, and long-term objectives in the region.

(2) In developing that strategy and those objectives, the President shall take into consideration—

(A) the benchmarks relating to Kosovo developed as described in subsection (a); and

(B) the benchmarks relating to Bosnia that were detailed in the report accompanying the certification by the President to Congress on March 3, 1998 (printed as House Document 105–223), with respect to the continued presence of United States Armed Forces, after June 30, 1998, in Bosnia and Herzegovina, submitted to Congress pursuant to section 7 of title I of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 63).

(3) That strategy and those objectives shall be developed in consultation with appropriate regional and international entities.

(c) SEMIANNUAL REPORT ON BENCHMARKS.—Not later than June 30, 2001, and every six months thereafter, the President shall submit to Congress a report on the progress made in achieving the benchmarks developed pursuant to subsection (a). The President may submit a single report covering these benchmarks and the benchmarks relating to Bosnia referred to in subsection (b)(2)(B).

(d) SEMIANNUAL REPORT ON COMPREHENSIVE STRATEGY.—Not later than June 30, 2001, and every six months thereafter so long as United States forces are in the Balkans, the President shall submit to Congress a report on the progress being made in developing and implementing a comprehensive political-military strategy as described in subsection (b)(1)(A).

SEC. 1213. SEMIANNUAL REPORT ON KOSOVO PEACEKEEPING.

(a) REQUIREMENT FOR PERIODIC REPORT.—The President shall submit to the specified congressional committees a semiannual report on the contributions of European nations and organizations to the peacekeeping operations in Kosovo. The first such report shall be submitted not later than December 1, 2000.

(b) CONTENT OF REPORT.—Each report shall contain detailed information on the following:

(1) The commitments and pledges made by the European Commission, the member nations of the European Union, and the European member nations of the North Atlantic Treaty Organization for—

(A) reconstruction assistance in Kosovo;

(B) humanitarian assistance in Kosovo;

(C) the Kosovo Consolidated Budget;

(D) police (including special police) for the United Nations international police force for Kosovo; and

(E) military personnel for peacekeeping operations in Kosovo.

(2) The amount of the assistance that has been provided in each category, and the number of police and military personnel that have been deployed to Kosovo, by each organization or nation referred to in paragraph (1).

(3) The full range of commitments and responsibilities that have been undertaken for Kosovo by the United Nations, the European Union, and the Organization for Security and Cooperation in Europe (OSCE), the progress made by those organizations in fulfilling those commitments and responsibilities, an assessment of the tasks that remain to be accomplished, and an anticipated schedule for completing those tasks.

(d)[1] SPECIFIED CONGRESSIONAL COMMITTEES.—In the section, the term "specified congressional committees" means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on International Relations, and the Committee on Appropriations of the House of Representatives.

[1] Section 1213 was enacted without a subsection (c).

Subtitle C—North Atlantic Treaty Organization and United States Forces in Europe

SEC. 1221. [22 U.S.C. 1928 note] NATO FAIR BURDENSHARING.

(a) REPORT ON COSTS OF OPERATION ALLIED FORCE.—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 costs to the United States of the 78-day air campaign known as Operation Allied Force conducted against the Federal Republic of Yugoslavia during the period from March 24 through June 9, 1999. The report shall include the following:

(1) The costs of ordnance expended, fuel consumed, and personnel.

(2) The estimated cost of the reduced service life of United States aircraft and other systems participating in the operation.

(b) REPORT ON BURDENSHARING OF FUTURE NATO OPERATIONS.—Whenever the North Atlantic Treaty Organization undertakes a military operation, 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 describing—

(1) the contributions to that operation made by each of the member nations of the North Atlantic Treaty Organization during that operation; and

(2) the contributions that each of the member nations of the North Atlantic Treaty Organization are making or have pledged to make during any follow-on operation.

(c) TIME FOR SUBMISSION OF REPORT.—A report under subsection (b) shall be submitted not later than 90 days after the completion of the military operation.

(d) APPLICABILITY.—Subsection (b) shall apply only with respect to military operations begun after the date of the enactment of this Act.

* * * * * * *

SEC. 1223. [10 U.S.C. 113 note] GAO STUDY ON THE BENEFITS AND COSTS OF UNITED STATES MILITARY ENGAGEMENT IN EUROPE.

(a) COMPTROLLER GENERAL STUDY.—The Comptroller General shall conduct a study assessing the benefits and costs to the United States and United States national security interests of the engagement of United States forces in Europe and of United States military strategies used to shape the international security environment in Europe.

(b) MATTERS TO BE INCLUDED.—The study shall include an assessment of the following matters:

(1) The benefits and costs to the United States of having forces stationed in Europe and assigned to areas of regional conflict such as Bosnia and Kosovo.

(2) The benefits and costs associated with stationing United States forces in Europe and with assigning those forces to areas of regional conflict, including an analysis of the bene-

fits and costs of deploying United States forces with the forces of European allies.

(3) The amount and type of the following kinds of contributions to European security made by European allies in 1999 and 2000:

(A) Financial contributions.

(B) Contributions of military personnel and units.

(C) Contributions of nonmilitary personnel, such as medical personnel, police officers, judicial officers, and other civic officials.

(D) Contributions, including contributions in kind, for humanitarian and reconstruction assistance and infrastructure building or activities that contribute to regional stability, whether in lieu of or in addition to military-related contributions.

(4) The extent to which a forward United States military presence compensates for existing shortfalls of air and sea lift capability in the event of regional conflict in Europe or the Middle East.

(c) REPORT.—The Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the study not later than December 1, 2001.

Subtitle D—Other Matters

SEC. 1231. JOINT DATA EXCHANGE CENTER WITH RUSSIAN FEDERATION ON EARLY WARNING SYSTEMS AND NOTIFICATION OF BALLISTIC MISSILE LAUNCHES.

(a) AUTHORITY.—The Secretary of Defense is authorized to establish, in conjunction with the Government of the Russian Federation, a United States-Russian Federation joint center for the exchange of data from systems to provide early warning of launches of ballistic missiles and for notification of launches of such missiles.

(b) SPECIFIC ACTIONS.—The actions that the Secretary undertakes for the establishment of the center may include—

(1) subject to subsection (d), participating in the renovation of a mutually agreed upon facility to be made available by the Russian Federation; and

(2) the furnishing of such equipment and supplies as may be necessary to begin the operation of the center.

(c) REPORT REQUIRED.—(1) Not later than 30 days after the date of the enactment of this Act, 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 on plans for the joint data exchange center.

(2) The report shall include the following:

(A) A detailed explanation as to why the particular facility intended to house the center was chosen.

(B) An estimate of the total cost of renovating that facility for use by the center.

(C) A description of the manner by which the United States proposes to meet its share of the costs of such renovation.

(d) LIMITATION.—(1) The Secretary of Defense may participate under subsection (b) in the renovation of the facility identified in the report under subsection (c) only if the United States and the Russian Federation enter into a cost-sharing arrangement that provides for an equal sharing between the two nations of the cost of establishing the center, including the costs of renovating and operating the facility.

(2) Not more than $4,000,000 of funds appropriated for fiscal year 2001 may be obligated or expended after the date of the enactment of this Act by the Secretary of Defense for the renovation of such facility until 30 days after the date on which the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of a written agreement between the United States and the Russian Federation that provides details of the cost-sharing arrangement specified in paragraph (1), in accordance with the Memorandum of Agreement between the two nations signed in Moscow in June 2000.

* * * * * * *

SEC. 1238. [22 U.S.C. 7002] UNITED STATES-CHINA SECURITY REVIEW COMMISSION.

(a) PURPOSES.—The purposes of this section are as follows:

(1) To establish the United States-China Security Review Commission to review the national security implications of trade and economic ties between the United States and the People's Republic of China.

(2) To facilitate the assumption by the United States-China Security Review Commission of its duties regarding the review referred to in paragraph (1) by providing for the transfer to that Commission of staff, materials, and infrastructure (including leased premises) of the Trade Deficit Review Commission that are appropriate for the review upon the submittal of the final report of the Trade Deficit Review Commission.

(b) ESTABLISHMENT OF UNITED STATES-CHINA SECURITY REVIEW COMMISSION.—

(1) IN GENERAL.—There is hereby established a commission to be known as the United States-China Security Review Commission (in this section referred to as the "Commission").

(2) PURPOSE.—The purpose of the Commission is to monitor, investigate, and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China.

(3) MEMBERSHIP.—The Commission shall be composed of 12 members, who shall be appointed in the same manner provided for the appointment of members of the Trade Deficit Review Commission under section 127(c)(3) of the Trade Deficit Review Commission Act (19 U.S.C. 2213 note), except that—

(A) appointment of members by the Speaker of the House of Representatives shall be made after consultation with the chairman of the Committee on Armed Services of the House of Representatives, in addition to consultation with the chairman of the Committee on Ways and Means

of the House of Representatives provided for under clause (iii) of subparagraph (A) of that section;

(B) appointment of members by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate shall be made after consultation with the chairman of the Committee on Armed Services of the Senate, in addition to consultation with the chairman of the Committee on Finance of the Senate provided for under clause (i) of that subparagraph;

(C) appointment of members by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate shall be made after consultation with the ranking minority member of the Committee on Armed Services of the Senate, in addition to consultation with the ranking minority member of the Committee on Finance of the Senate provided for under clause (ii) of that subparagraph;

(D) appointment of members by the minority leader of the House of Representatives shall be made after consultation with the ranking minority member of the Committee on Armed Services of the House of Representatives, in addition to consultation with the ranking minority member of the Committee on Ways and Means of the House of Representatives provided for under clause (iv) of that subparagraph;

(E) persons appointed to the Commission shall have expertise in national security matters and United States-China relations, in addition to the expertise provided for under subparagraph (B)(i)(I) of that section;

(F) members shall be appointed to the Commission not later than 30 days after the date on which each new Congress convenes;

(G) members of the Commission may be reappointed for additional terms of service as members of the Commission; and

(H) members of the Trade Deficit Review Commission as of the date of the enactment of this Act shall serve as members of the Commission until such time as members are first appointed to the Commission under this paragraph.

(4) RETENTION OF SUPPORT.—The Commission shall retain and make use of such staff, materials, and infrastructure (including leased premises) of the Trade Deficit Review Commission as the Commission determines, in the judgment of the members of the Commission, are required to facilitate the ready commencement of activities of the Commission under subsection (c) or to carry out such activities after the commencement of such activities.

(5) CHAIRMAN AND VICE CHAIRMAN.—The members of the Commission shall select a Chairman and Vice Chairman of the Commission from among the members of the Commission.

(6) MEETINGS.—

(A) MEETINGS.—The Commission shall meet at the call of the Chairman of the Commission.

(B) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business of the Commission.

(7) VOTING.—Each member of the Commission shall be entitled to one vote, which shall be equal to the vote of every other member of the Commission.

(c) DUTIES.—

(1) ANNUAL REPORT.—Not later than March 1 each year (beginning in 2002), the Commission shall submit to Congress a report, in both unclassified and classified form, regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China. The report shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions, if any, of the national security implications for the United States of the trade and current balances with the People's Republic of China in goods and services, financial transactions, and technology transfers. The Commission shall also take into account patterns of trade and transfers through third countries to the extent practicable.

(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include, at a minimum, a full discussion of the following:

(A) The portion of trade in goods and services with the United States that the People's Republic of China dedicates to military systems or systems of a dual nature that could be used for military purposes.

(B) The acquisition by the People's Republic of China of advanced military or dual-use technologies from the United States by trade (including procurement) and other technology transfers, especially those transfers, if any, that contribute to the proliferation of weapons of mass destruction or their delivery systems, or that undermine international agreements or United States laws with respect to nonproliferation.

(C) Any transfers, other than those identified under subparagraph (B), to the military systems of the People's Republic of China made by United States firms and United States-based multinational corporations.

(D) An analysis of the statements and writing of the People's Republic of China officials and officially-sanctioned writings that bear on the intentions, if any, of the Government of the People's Republic of China regarding the pursuit of military competition with, and leverage over, or cooperation with, the United States and the Asian allies of the United States.

(E) The military actions taken by the Government of the People's Republic of China during the preceding year that bear on the national security of the United States and the regional stability of the Asian allies of the United States.

(F) The effects, if any, on the national security interests of the United States of the use by the People's Repub-

lic of China of financial transactions and capital flow and currency manipulations.

(G) Any action taken by the Government of the People's Republic of China in the context of the World Trade Organization that is adverse or favorable to the United States national security interests.

(H) Patterns of trade and investment between the People's Republic of China and its major trading partners, other than the United States, that appear to be substantively different from trade and investment patterns with the United States and whether the differences have any national security implications for the United States.

(I) The extent to which the trade surplus of the People's Republic of China with the United States enhances the military budget of the People's Republic of China.

(J) An overall assessment of the state of the security challenges presented by the People's Republic of China to the United States and whether the security challenges are increasing or decreasing from previous years.

(3) RECOMMENDATIONS OF REPORT.—Each report under paragraph (1) shall also include recommendations for action by Congress or the President, or both, including specific recommendations for the United States to invoke Article XXI (relating to security exceptions) of the General Agreement on Tariffs and Trade 1994 with respect to the People's Republic of China, as a result of any adverse impact on the national security interests of the United States.

(d) HEARINGS.—

(1) IN GENERAL.—The Commission or, at its direction, any panel or member of the Commission, may for the purpose of carrying out the provisions of this section, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

(2) INFORMATION.—The Commission may secure directly from the Department of Defense, the Central Intelligence Agency, and any other Federal department or agency information that the Commission considers necessary to enable the Commission to carry out its duties under this section, except the provision of intelligence information to the Commission shall be made with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, under procedures approved by the Director of Central Intelligence.

(3) SECURITY.—The Office of Senate Security shall—

(A) provide classified storage and meeting and hearing spaces, when necessary, for the Commission; and

(B) assist members and staff of the Commission in obtaining security clearances.

(4) SECURITY CLEARANCES.—All members of the Commission and appropriate staff shall be sworn and hold appropriate security clearances.

(e) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Members of the Commission shall be compensated in the same manner provided for the compensation of members of the Trade Deficit Review Commission under section 127(g)(1) and section 127(g)(6) of the Trade Deficit Review Commission Act (19 U.S.C. 2213 note).

(2) TRAVEL EXPENSES.—Travel expenses of the Commission shall be allowed in the same manner provided for the allowance of the travel expenses of the Trade Deficit Review Commission under section 127(g)(2) of the Trade Deficit Review Commission Act.

(3) STAFF.—An executive director and other additional personnel for the Commission shall be appointed, compensated, and terminated in the same manner provided for the appointment, compensation, and termination of the executive director and other personnel of the Trade Deficit Review Commission under section 127(g)(3) and section 127(g)(6) of the Trade Deficit Review Commission Act.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Federal Government employees may be detailed to the Commission in the same manner provided for the detail of Federal Government employees to the Trade Deficit Review Commission under section 127(g)(4) of the Trade Deficit Review Commission Act.

(5) FOREIGN TRAVEL FOR OFFICIAL PURPOSES.—Foreign travel for official purposes by members and staff of the Commission may be authorized by either the Chairman or the Vice Chairman of the Commission.

(6) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services for the Commission in the same manner provided for the procurement of temporary and intermittent services for the Trade Deficit Review Commission under section 127(g)(5) of the Trade Deficit Review Commission Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Commission for fiscal year 2001, and for each fiscal year thereafter, such sums as may be necessary to enable the Commission to carry out its functions under this section.

(2) AVAILABILITY.—Amounts appropriated to the Commission shall remain available until expended.

(g) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) EFFECTIVE DATE.—This section shall take effect on the first day of the 107th Congress.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

SEC. 1301. [22 U.S.C. 5959 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the Na-

tional Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2001 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 2001 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

* * * * * * *

SEC. 1303. [22 U.S.C. 5952 note] PROHIBITION ON USE OF FUNDS FOR ELIMINATION OF CONVENTIONAL WEAPONS.

No fiscal year 2001 Cooperative Threat Reduction funds, and no funds appropriated for Cooperative Threat Reduction programs for any other fiscal year, may be obligated or expended for elimination of conventional weapons or the delivery vehicles primarily intended to deliver such weapons.

* * * * * * *

SEC. 1306. AGREEMENT ON NUCLEAR WEAPONS STORAGE SITES.

The Secretary of Defense shall seek to enter into an agreement with Russia regarding procedures to allow the United States appropriate access to nuclear weapons storage sites for which assistance under Cooperative Threat Reduction programs is provided.

* * * * * * *

SEC. 1308. [22 U.S.C. 5959] REPORTS ON ACTIVITIES AND ASSISTANCE UNDER COOPERATIVE THREAT REDUCTION PROGRAMS.

(a) ANNUAL REPORT.—In any year in which the budget of the President under section 1105 of title 31, United States Code, for the fiscal year beginning in such year requests funds for the Department of Defense for assistance or activities under Cooperative Threat Reduction programs with the states of the former Soviet Union, the Secretary of Defense shall submit to Congress a report on activities and assistance during the preceding fiscal year under Cooperative Threat Reduction programs setting forth the matters in subsection (c).

(b) DEADLINE FOR REPORT.—The report under subsection (a) shall be submitted not later than the first Monday in February of a year.

(c) MATTERS TO BE INCLUDED.—The report under subsection (a) in a year shall set forth the following:

(1) An estimate of the total amount that will be required to be expended by the United States in order to achieve the objectives of the Cooperative Threat Reduction programs.

(2) A five-year plan setting forth the amount of funds and other resources proposed to be provided by the United States for Cooperative Threat Reduction programs over the term of the plan, including the purpose for which such funds and resources will be used, and to provide guidance for the prepara-

tion of annual budget submissions with respect to Cooperative Threat Reduction programs.

(3) A description of the Cooperative Threat Reduction activities carried out during the fiscal year ending in the year preceding the year of the report, including—

(A) the amounts notified, obligated, and expended for such activities and the purposes for which such amounts were notified, obligated, and expended for such fiscal year and cumulatively for Cooperative Threat Reduction programs;

(B) a description of the participation, if any, of each department and agency of the United States Government in such activities;

(C) a description of such activities, including the forms of assistance provided;

(D) a description of the United States private sector participation in the portion of such activities that were supported by the obligation and expenditure of funds for Cooperative Threat Reduction programs; and

(E) such other information as the Secretary of Defense considers appropriate to inform Congress fully of the operation of Cooperative Threat Reduction programs and activities, including with respect to proposed demilitarization or conversion projects, information on the progress toward demilitarization of facilities and the conversion of the demilitarized facilities to civilian activities.

(4) A description of the audits, examinations, and other efforts, such as on-site inspections, conducted by the United States during the fiscal year ending in the year preceding the year of the report to ensure that assistance provided under Cooperative Threat Reduction programs is fully accounted for and that such assistance is being used for its intended purpose, including—

(A) if such assistance consisted of equipment, a description of the current location of such equipment and the current condition of such equipment;

(B) if such assistance consisted of contracts or other services, a description of the status of such contracts or services and the methods used to ensure that such contracts and services are being used for their intended purpose;

(C) a determination whether the assistance described in subparagraphs (A) and (B) has been used for its intended purpose; and

(D) a description of the audits, examinations, and other efforts planned to be carried out during the fiscal year beginning in the year of the report to ensure that Cooperative Threat Reduction assistance provided during such fiscal year is fully accounted for and is used for its intended purpose.

(5) A current description of the tactical nuclear weapons arsenal of Russia, including—

(A) an estimate of the current types, numbers, yields, viability, locations, and deployment status of the nuclear warheads in that arsenal;

(B) an assessment of the strategic relevance of such warheads;

(C) an assessment of the current and projected threat of theft, sale, or unauthorized use of such warheads; and

(D) a summary of past, current, and planned United States efforts to work cooperatively with Russia to account for, secure, and reduce Russia's stockpile of tactical nuclear warheads and associated fissile materials.

(d) INPUT OF DCI.—The Director of Central Intelligence shall submit to the Secretary of Defense the views of the Director on any matters covered by subsection (c)(5) in a report under subsection (a). Such views shall be included in such report as a classified annex to such report.

(e) COMPTROLLER GENERAL ASSESSMENT.—Not later than 90 days after the date on which a report is submitted to Congress under subsection (a), the Comptroller General shall submit to Congress a report setting forth the Comptroller General's assessment of the information described in paragraphs (2) and (4) of subsection (c).

(f) FIRST REPORT.—The first report submitted under subsection (a) shall be submitted in 2001.

(g) REPEAL OF SUPERSEDED REPORTING REQUIREMENTS.—[Omitted-Amendments]

(h) LIMITATION ON USE OF FUNDS UNTIL SUBMISSION OF MULTIYEAR PLAN.—Not more than 10 percent of fiscal year 2001 Cooperative Threat Reduction funds may be obligated or expended until the Secretary of Defense submits to Congress an updated version of the multiyear plan for fiscal year 2001 required to be submitted under section 1205 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 22 U.S.C. 5952 note).

(i) REPORT ON RUSSIAN NONSTRATEGIC NUCLEAR ARMS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the following regarding Russia's arsenal of tactical nuclear warheads:

(1) Estimates regarding current types, numbers, yields, viability, locations, and deployment status of the warheads.

(2) An assessment of the strategic relevance of the warheads.

(3) An assessment of the current and projected threat of theft, sale, or unauthorized use of the warheads.

(4) A summary of past, current, and planned United States efforts to work cooperatively with Russia to account for, secure, and reduce Russia's stockpile of tactical nuclear warheads and associated fissile material.

b. Department of Defense Appropriations Act, 2001

(Public Law 106–259, approved Aug. 9, 2000)

TITLE VIII

GENERAL PROVISIONS

* * * * * * *

SEC. 8019.[1] [10 U.S.C. 2687 note] Notwithstanding any other provision of law, during the current fiscal year, 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.

---

c. National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle D—Miscellaneous Report Requirements and Repeals

* * * * * * *

SEC. 1035. REPORT ON ASSESSMENTS OF READINESS TO EXECUTE THE NATIONAL MILITARY STRATEGY.

(a) REPORT.—Not later than April 1 each year (but subject to subsection (e)), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report in unclassified form assessing the effect of continued operations in the Balkans region on—

[1] An identical provision has appeared in previous Department of Defense appropriations Acts.

(1) the ability of the Armed Forces to successfully meet other regional contingencies; and

(2) the readiness of the Armed Forces to execute the National Military Strategy.

(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall include the following:

(1) All models used by the Chairman of the Joint Chiefs of Staff to assess the capability of the United States to execute the full range of missions under the National Military Strategy and all other models used by the Armed Forces to assess that capability.

(2) Separate assessments that would result from the use of those models if it were necessary to execute the full range of missions called for under the National Military Strategy under each of the scenarios set forth in subsection (c), including the levels of casualties the United States would be projected to incur.

(3) Assumptions made about the readiness levels of major units included in each such assessment, including equipment, personnel, and training readiness and sustainment ability.

(4) The increasing levels of casualties that would be projected under each such scenario over a range of risks of prosecuting two Major Theater Wars that proceeds from low-moderate risk to moderate-high risk.

(5) An estimate of—

(A) the total resources needed to attain a moderate-high risk under those scenarios;

(B) the total resources needed to attain a low-moderate risk under those scenarios; and

(C) the incremental resources needed to decrease the level of risk from moderate-high to low-moderate.

(c) SCENARIOS TO BE USED.—The scenarios to be used for purposes of paragraphs (1), (2), and (3) of subsection (b) are the following:

(1) That while the Armed Forces are engaged in operations at the level of the operations ongoing as of the date of the enactment of this Act, international armed conflict begins—

(A) on the Korean peninsula; and

(B) first on the Korean peninsula and then 45 days later in Southwest Asia.

(2) That while the Armed Forces are engaged in operations at the peak level reached during Operation Allied Force against the Federal Republic of Yugoslavia, international armed conflict begins—

(A) on the Korean peninsula; and

(B) first on the Korean peninsula and then 45 days later in Southwest Asia.

(d) CONSULTATION.—In preparing a report under this section, the Secretary of Defense shall consult with the Chairman of the Joint Chiefs of Staff, the commanders of the unified commands, the Secretaries of the military departments, and the heads of the combat support agencies and other such entities within the Department of Defense as the Secretary considers necessary.

(e) TERMINATION WHEN UNITED STATES MILITARY OPERATIONS END.—(1) No report is required under this section after United States military operations in the Balkans region have ended.

(2) After the requirement for an annual report under this section is terminated by operation of paragraph (1), but not later than the latest date on which the next annual report under this section would, except for paragraph (1), otherwise be due, the Secretary of Defense shall transmit to Congress a notification of the termination of the reporting requirement.

* * * * * * *

SEC. 1039. [10 U.S.C. 113 note] REPORT ON NATO DEFENSE CAPABILITIES INITIATIVE.

(a) FINDINGS.—Congress makes the following findings:

(1) At the meeting of the North Atlantic Council held in Washington, DC, in April 1999, the NATO Heads of State and Governments launched a Defense Capabilities Initiative.

(2) The Defense Capabilities Initiative is designed to improve the defense capabilities of the individual nations of the NATO Alliance to ensure the effectiveness of future operations across the full spectrum of Alliance missions in the present and foreseeable security environment.

(3) Under the Defense Capabilities Initiative, special focus will be given to improving interoperability among Alliance forces and to increasing defense capabilities through improvements in the deployability and mobility of Alliance forces, the sustainability and logistics of those forces, the survivability and effective engagement capability of those forces, and command and control and information systems.

(4) The successful implementation of the Defense Capabilities Initiative will serve to enable all members of the Alliance to make a more equitable contribution to the full spectrum of Alliance missions, thereby increasing burdensharing within the Alliance and enhancing the ability of European members of the Alliance to undertake operations pursuant to the European Security and Defense Identity within the Alliance.

(b) ANNUAL REPORT.—(1) Not later than January 31 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and International Relations of the House of Representatives a report, to be prepared in consultation with the Secretary of State, on implementation of the Defense Capabilities Initiative by the nations of the NATO Alliance. The report shall include the following:

(A) A discussion of the work of the temporary High-Level Steering Group, or any successor group, established to oversee the implementation of the Defense Capabilities Initiative and to meet the requirement of coordination and harmonization among relevant planning disciplines.

(B) A description of the actions taken, including implementation of the Multinational Logistics Center concept and development of the C3 system architecture, by the Alliance as a whole to further the Defense Capabilities Initiative.

(C) A description of the actions taken by each member of the Alliance other than the United States to improve the capabilities of its forces in each of the following areas:

(i) Interoperability with forces of other Alliance members.

(ii) Deployability and mobility.

(iii) Sustainability and logistics.

(iv) Survivability and effective engagement capability.

(v) Command and control and information systems.

(2) The report shall be submitted in unclassified form, but may also be submitted in classified form if necessary.

* * * * * * *

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Relating to the People's Republic of China

SEC. 1201. [10 U.S.C. 168 note] LIMITATION ON MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH CHINESE PEOPLE'S LIBERATION ARMY.

(a) LIMITATION.—The Secretary of Defense may not authorize any military-to-military exchange or contact described in subsection (b) to be conducted by the armed forces with representatives of the People's Liberation Army of the People's Republic of China if that exchange or contact would create a national security risk due to an inappropriate exposure specified in subsection (b).

(b) COVERED EXCHANGES AND CONTACTS.—Subsection (a) applies to any military-to-military exchange or contact that includes inappropriate exposure to any of the following:

(1) Force projection operations.

(2) Nuclear operations.

(3) Advanced combined-arms and joint combat operations.

(4) Advanced logistical operations.

(5) Chemical and biological defense and other capabilities related to weapons of mass destruction.

(6) Surveillance and reconnaissance operations.

(7) Joint warfighting experiments and other activities related to a transformation in warfare.

(8) Military space operations.

(9) Other advanced capabilities of the Armed Forces.

(10) Arms sales or military-related technology transfers.

(11) Release of classified or restricted information.

(12) Access to a Department of Defense laboratory.

(c) EXCEPTIONS.—Subsection (a) does not apply to any search-and-rescue or humanitarian operation or exercise.

(d) ANNUAL CERTIFICATION BY SECRETARY.—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, not later than December 31 each year, a certification in writing as to whether or not any military-to-military exchange or contact during that calendar year was conducted in violation of subsection (a).

(e) ANNUAL REPORT.—Not later than March 31 each year beginning in 2001, 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 the Secretary's assessment of the current state of military-to-military exchanges and contacts with the People's Liberation Army. The report shall include the following:

(1) A summary of all such military-to-military contacts during the period since the last such report, including a summary of topics discussed and questions asked by the Chinese participants in those contacts.

(2) A description of the military-to-military exchanges and contacts scheduled for the next 12-month period and a plan for future contacts and exchanges.

(3) The Secretary's assessment of the benefits the Chinese expect to gain from those military-to-military exchanges and contacts.

(4) The Secretary's assessment of the benefits the Department of Defense expects to gain from those military-to-military exchanges and contacts.

(5) The Secretary's assessment of how military-to-military exchanges and contacts with the People's Liberation Army fit into the larger security relationship between the United States and the People's Republic of China.

(f) REPORT OF PAST MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH THE PRC.—Not later than March 31, 2000, 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 past military-to-military exchanges and contacts between the United States and the People's Republic of China. The report shall be unclassified, but may contain a classified annex, and shall include the following:

(1) A list of the general and flag grade officers of the People's Liberation Army who have visited United States military installations since January 1, 1993.

(2) The itinerary of the visits referred to in paragraph (2), including the installations visited, the duration of the visits, and the activities conducted during the visits.

(3) The involvement, if any, of the general and flag officers referred to in paragraph (1) in the Tiananmen Square massacre of June 1989.

(4) A list of the facilities in the People's Republic of China that United States military officers have visited as a result of any military-to-military exchange or contact program between the United States and the People's Republic of China since January 1, 1993.

(5) A list of facilities in the People's Republic of China that have been the subject of a requested visit by the Department of Defense that has been denied by People's Republic of China authorities.

(6) A list of facilities in the United States that have been the subject of a requested visit by the People's Liberation Army that has been denied by the United States.

(7) Any official documentation (such as memoranda for the record, after-action reports, and final itineraries) and all receipts for expenses over $1,000, concerning military-to-military exchanges or contacts between the United States and the People's Republic of China in 1999.

(8) A description of military-to-military exchanges or contacts between the United States and the People's Republic of China scheduled for 2000.

(9) An assessment regarding whether or not any People's Republic of China military officials have been shown classified material as a result of military-to-military exchanges or contacts between the United States and the People's Republic of China.

SEC. 1202. [10 U.S.C. 113 note] ANNUAL REPORT ON MILITARY POWER OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the specified congressional committees a report, in both classified and unclassified form, on the current and future military strategy of the People's Republic of China. The report shall address the current and probable future course of military-technological development on the People's Liberation Army and the tenets and probable development of Chinese grand strategy, security strategy, and military strategy, and of military organizations and operational concepts, through the next 20 years.

(b) MATTERS TO BE INCLUDED.—Each report under this section shall include analyses and forecasts of the following:

(1) The goals of Chinese grand strategy, security strategy, and military strategy.

(2) Trends in Chinese strategy that would be designed to establish the People's Republic of China as the leading political power in the Asia-Pacific region and as a political and military presence in other regions of the world.

(3) The security situation in the Taiwan Strait.

(4) Chinese strategy regarding Taiwan.

(5) The size, location, and capabilities of Chinese strategic, land, sea, and air forces, including detailed analysis of those forces facing Taiwan.

(6) Developments in Chinese military doctrine, focusing on (but not limited to) efforts to exploit a transformation in military affairs or to conduct preemptive strikes.

(7) Efforts, including technology transfers and espionage, by the People's Republic of China to develop, acquire, or gain access to information, communication, space and other advanced technologies that would enhance military capabilities.

(8) An assessment of any challenges during the preceding year to the deterrent forces of the Republic of China on Taiwan, consistent with the commitments made by the United States in the Taiwan Relations Act (Public Law 96–8).

(c) SPECIFIED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term "specified congressional committees" means 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.

* * * * * * *

Subtitle D—Other Matters

SEC. 1231. [50 U.S.C. 1707] MULTINATIONAL ECONOMIC EMBARGOES AGAINST GOVERNMENTS IN ARMED CONFLICT WITH THE UNITED STATES.

(a) POLICY ON THE ESTABLISHMENT OF EMBARGOES.—It is the policy of the United States, that upon the use of the Armed Forces of the United States to engage in hostilities against any foreign country, the President shall, as appropriate—

(1) seek the establishment of a multinational economic embargo against such country; and

(2) seek the seizure of its foreign financial assets.

(b) REPORTS TO CONGRESS.—Not later than 20 days after the first day of the engagement of the United States in hostilities described in subsection (a), the President shall, if the armed conflict has continued for 14 days, submit to Congress a report setting forth—

(1) the specific steps the United States has taken and will continue to take to establish a multinational economic embargo and to initiate financial asset seizure pursuant to subsection (a); and

(2) any foreign sources of trade or revenue that directly or indirectly support the ability of the adversarial government to sustain a military conflict against the United States.

SEC. 1232. [50 U.S.C. 1541 note] LIMITATION ON DEPLOYMENT OF ARMED FORCES IN HAITI DURING FISCAL YEAR 2000 AND CONGRESSIONAL NOTICE OF DEPLOYMENTS TO HAITI.

(a) LIMITATION ON DEPLOYMENT.—No funds available to the Department of Defense during fiscal year 2000 may be expended after May 31, 2000, for the continuous deployment of United States Armed Forces in Haiti pursuant to the Department of Defense operation designated as Operation Uphold Democracy.

(b) REPORT.—Whenever there is a deployment of United States Armed Forces to Haiti after May 31, 2000, the President shall, not later than 96 hours after such deployment begins, transmit to Congress a written report regarding the deployment. In any such report, the President shall specify (1) the purpose of the deployment, and (2) the date on which the deployment is expected to end.

* * * * * * *

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

SEC. 1301. [22 U.S.C. 5952 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2000 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 2000 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the $475,500,000 authorized to be appropriated to the Department of Defense for fiscal year 2000 in section 301(23) for Cooperative Threat Reduction programs, not more than the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $177,300,000.

(2) For strategic nuclear arms elimination in Ukraine, $41,800,000.

(3) For activities to support warhead dismantlement processing in Russia, $9,300,000.

(4) For security enhancements at chemical weapons storage sites in Russia, $20,000,000.

(5) For weapons transportation security in Russia, $15,200,000.

(6) For planning, design, and construction of a storage facility for Russian fissile material, $64,500,000.

(7) For weapons storage security in Russia, $99,000,000.

(8) For development of a cooperative program with the Government of Russia to eliminate the production of weapons grade plutonium at Russian reactors, $32,300,000.

(9) For biological weapons proliferation prevention activities in Russia, $12,000,000.

(10) For activities designated as Other Assessments/Administrative Support, $1,800,000.

(11) For defense and military contacts, $2,300,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2000 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (11) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2000 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2000 for a purpose listed in any of the paragraphs

in subsection (a) in excess of the amount specifically authorized for such purpose.

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts for the purposes stated in any of paragraphs (4) through (6), (8), (10), or (11) of subsection (a) in excess of 115 percent of the amount specifically authorized for such purposes.

SEC. 1303. [22 U.S.C. 5952 note] PROHIBITION ON USE OF FUNDS FOR SPECIFIED PURPOSES.

(a) IN GENERAL.—No fiscal year 2000 Cooperative Threat Reduction funds, and no funds appropriated for Cooperative Threat Reduction programs after the date of the enactment of this Act, may be obligated or expended for any of the following purposes:

(1) Conducting with Russia any peacekeeping exercise or other peacekeeping-related activity.

(2) Provision of housing.

(3) Provision of assistance to promote environmental restoration.

(4) Provision of assistance to promote job retraining.

(b) LIMITATION WITH RESPECT TO DEFENSE CONVERSION ASSISTANCE.—None of the funds appropriated pursuant to the authorization of appropriations in section 301 of this Act, and no funds appropriated to the Department of Defense in any other Act enacted after the date of the enactment of this Act, may be obligated or expended for the provision of assistance to Russia or any other state of the former Soviet Union to promote defense conversion.

(c) LIMITATION WITH RESPECT TO CONVENTIONAL WEAPONS.—No fiscal year 2000 Cooperative Threat Reduction funds may be obligated or expended for elimination of conventional weapons or the delivery vehicles primarily intended to deliver such weapons.

SEC. 1304. [22 U.S.C. 5952 note] LIMITATIONS ON USE OF FUNDS FOR FISSILE MATERIAL STORAGE FACILITY.

(a) LIMITATIONS ON USE OF FISCAL YEAR 2000 FUNDS.—No fiscal year 2000 Cooperative Threat Reduction funds may be used—

(1) for construction of a second wing for the storage facility for Russian fissile material referred to in section 1302(a)(6); or

(2) for design or planning with respect to such facility until 15 days after the date that the Secretary of Defense submits to Congress notification that Russia and the United States have signed a verifiable written transparency agreement that ensures that material stored at the facility is of weapons origin.

(b) LIMITATION ON CONSTRUCTION.—No funds authorized to be appropriated for Cooperative Threat Reduction programs may be

used for construction of the storage facility referred to in subsection (a) until the Secretary of Defense submits to Congress the following:

(1) A certification that additional capacity is necessary at such facility for storage of Russian weapons-origin fissile material.

(2) A detailed cost estimate for a second wing for the facility.

(3) A certification that Russia and the United States have signed a verifiable written transparency agreement that ensures that material stored at the facility is of weapons origin.

SEC. 1305. [22 U.S.C. 5952 note] LIMITATION ON USE OF FUNDS FOR CHEMICAL WEAPONS DESTRUCTION.

No fiscal year 2000 Cooperative Threat Reduction funds, and no funds appropriated for Cooperative Threat Reduction programs after the date of the enactment of this Act, may be obligated or expended for planning, design, or construction of a chemical weapons destruction facility in Russia.

SEC. 1306. LIMITATION ON USE OF FUNDS UNTIL SUBMISSION OF REPORT.

Not more than 50 percent of the fiscal year 2000 Cooperative Threat Reduction funds may be obligated or expended until the Secretary of Defense submits to Congress a report describing—

(1) with respect to each purpose listed in section 1302, whether the Department of Defense is the appropriate executive agency to carry out Cooperative Threat Reduction programs for such purpose, and if so, why; and

(2) for any purpose that the Secretary determines is not appropriately carried out by the Department of Defense, a plan for migrating responsibility for carrying out such purpose to the appropriate agency.

SEC. 1307. LIMITATION ON USE OF FUNDS UNTIL SUBMISSION OF MULTIYEAR PLAN.

[Repealed by section 1308(g)(1)(D) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–343)]

SEC. 1308. REQUIREMENT TO SUBMIT REPORT.

Not later than December 31, 1999, the Secretary of Defense shall submit to Congress a report including—

(1) an explanation of the strategy of the Department of Defense for encouraging States of the former Soviet Union that receive funds through Cooperative Threat Reduction programs to contribute financially to the threat reduction effort;

(2) a prioritization of the projects carried out by the Department of Defense under Cooperative Threat Reduction programs;

(3) an identification of any limitations that the United States has imposed or will seek to impose, either unilaterally or through negotiations with recipient States, on the level of assistance provided by the United States for each of such projects; and

(4) an identification of the amount of international financial assistance provided for Cooperative Threat Reduction programs by other States.

SEC. 1309. REPORT ON EXPANDED THREAT REDUCTION INITIATIVE.

Not later than March 31, 2000, the President shall submit to Congress a report on the Expanded Threat Reduction Initiative. Such report shall include a description of the plans for ensuring effective coordination between executive agencies in carrying out the Expanded Threat Reduction Initiative to minimize duplication of efforts.

SEC. 1310. LIMITATION ON USE OF FUNDS UNTIL SUBMISSION OF CERTIFICATION.

No funds appropriated for fiscal year 1999 for Cooperative Threat Reduction programs and remaining available for obligation or expenditure may be obligated or expended for assistance for any country under a Cooperative Threat Reduction Program until the President resubmits to Congress an updated certification under section 1203(d) of the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160; 22 U.S.C. 5952(d)), section 1412(d) of the Former Soviet Union Demilitarization Act of 1992 (title XIV of Public Law 102–484; 22 U.S.C. 5902(d)), and section 502 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Public Law 102–511; 22 U.S.C. 5852).

SEC. 1311. PERIOD COVERED BY ANNUAL REPORT ON ACCOUNTING FOR UNITED STATES ASSISTANCE UNDER COOPERATIVE THREAT REDUCTION PROGRAMS.

[Omitted-Amendment]

SEC. 1312. [22 U.S.C. 5955 note] RUSSIAN NONSTRATEGIC NUCLEAR ARMS.

It is the sense of Congress that—

(1) it is in the interest of Russia to fully implement the Presidential Nuclear Initiatives announced in 1991 and 1992 by then-President of the Soviet Union Gorbachev and then-President of Russia Yeltsin;

(2) the President of the United States should call on Russia to match the unilateral reductions in the United States inventory of tactical nuclear weapons, which have reduced the inventory by nearly 90 percent; and

(3) if the re-certification under section 1310 is made, the President should emphasize the continued interest of the United States in working cooperatively with Russia to reduce the dangers associated with Russia's tactical nuclear arsenal.

d. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—United States Armed Forces in Bosnia and Herzegovina

SEC. 1201. FINDINGS.

Congress makes the following findings:

(1) The contributions of the people of the United States and other nations have, in large measure, resulted in the suspension of fighting and alleviated the suffering of the people of Bosnia and Herzegovina since December 1995.

(2) The United States has expended approximately $9,500,000,000 between 1992 and mid-1998 just in support of the United States military operations in Bosnia to achieve those results.

(3) Efforts to restore the economy and political structure in Bosnia and Herzegovina have achieved some success in accordance with the Dayton Accords.

(4) On March 3, 1998, the President certified to Congress (A) that the continued presence of United States forces in Bosnia and Herzegovina after June 30, 1998, was required in order to meet the national security interests of the United States, and (B) that United States Armed Forces will not serve as, or be used as, civil police in Bosnia and Herzegovina.

(5) With that certification, the President submitted to Congress a report stating that the goal of the military presence in Bosnia and Herzegovina is to establish the conditions under which implementation of the Dayton Accords can continue without the support of a major NATO-led military force and setting forth the criteria for determining when that goal has been accomplished.

(6) Since the administration has not specified how long achievement of that goal is expected to take, the mission of United States ground combat forces in Bosnia and Herzegovina is essentially of indefinite duration.

(7) The NATO operations plan for the Stabilization Force (Operations Plan 10407, which went into effect on June 20, 1998, after approval by allied foreign ministers) incorporates all of the benchmarks set forth in the report referred to in paragraph (5) and states that the Stabilization Force will develop detailed criteria for assessing progress in achieving those benchmarks in close coordination with key international organizations participating in civilian implementation of the Dayton Accords.

(8) The military representatives of NATO member nations have been tasked by the North Atlantic Council to provide estimates of the time likely to be required for implementation of the Dayton Accords.

(9) NATO has decided to conduct formal reviews when appropriate (but at intervals of not more than 6 months) to as-

sess the security situation and the progress being made in the implementation of the civil aspects of the Dayton Accords. Those reviews will enable the Alliance to make decisions as to reductions in the size or the Stabilization Force, leading to its eventual full withdrawal.

(10) NATO has approved the creation of a multinational specialized unit of gendarmes or paramilitary police composed of European security forces to help promote public security in Bosnia and Herzegovina as a part of the post-June 1998 mission for the Stabilization Force.

(11) The limit established for spending by the United States for the defense discretionary budget category for fiscal year 1998 in the Balanced Budget and Emergency Deficit Control Act of 1985 does not take into account the continued deployment of United States forces in Bosnia and Herzegovina after June 30, 1998, leading to the request by the President for emergency supplemental appropriations for the Bosnia and Herzegovina mission through September 30, 1998.

(12) Amounts for Department of Defense operations in Bosnia and Herzegovina during fiscal year 1999 were not included in the budget of the President for fiscal year 1999, as submitted to Congress on February 2, 1998.

(13) The President requested $1,858,600,000 in emergency appropriations in his March 4, 1998, amendment to the fiscal year 1999 budget to cover the shortfall in funding in fiscal year 1999 for the costs of extending the mission in Bosnia.

SEC. 1202. SENSE OF CONGRESS.

(a) SENSE OF CONGRESS CONCERNING UNITED STATES FORCES AND ACCOMPLISHMENT OF TASKS IN BOSNIA AND HERZEGOVINA.—It is the sense of Congress that—

(1) United States ground combat forces should not remain in Bosnia and Herzegovina indefinitely in view of the worldwide commitments of the Armed Forces of the United States;

(2) the President should work with NATO allies and the other nations whose military forces are participating in the NATO-led Stabilization Force to withdraw United States ground combat forces from Bosnia and Herzegovina within a reasonable period of time, consistent with the safety of those forces and the accomplishment of the Stabilization Force's military tasks;

(3) a NATO-led force without the participation of United States ground combat forces in Bosnia and Herzegovina might be suitable for a follow-on force for Bosnia and Herzegovina if the European Security and Defense Identity is not sufficiently developed or is otherwise considered inappropriate for such a mission; and

(4) the United States may decide to provide appropriate support to a Western European Union-led or NATO-led follow-on force for Bosnia and Herzegovina, including command and control, intelligence, logistics, and, if necessary, a ready reserve force in the region.

(b) SENSE OF CONGRESS CONCERNING PRESIDENTIAL ACTIONS.—It is the sense of Congress that the President—

(1) should inform the European NATO allies of the expression of the sense of Congress in subsection (a) and should strongly urge them to undertake preparations for establishing a Western European Union-led or a NATO-led force as a follow-on force to the Stabilization Force if needed to maintain peace and stability in Bosnia and Herzegovina; and

(2) should consult closely with the congressional leadership and the congressional defense committees with respect to the progress being made toward achieving a sustainable peace in Bosnia and Herzegovina and the progress being made toward a reduction and ultimate withdrawal of United States ground combat forces from Bosnia and Herzegovina.

(c) SENSE OF CONGRESS CONCERNING DEFENSE BUDGET.—It is the sense of Congress that—

(1) the President should include in the budget for the Department of Defense that the President submits to Congress under section 1105(a) of title 31, United States Code, for each fiscal year sufficient amounts to pay for any proposed continuation of the participation of United States forces in NATO operations in Bosnia and Herzegovina during that fiscal year; and

(2) amounts included in the budget for the purpose stated in paragraph (1) should be over and above the defense discretionary estimates as identified in the Bipartisan Budget Agreement of May 16, 1997 and the fiscal year 1998 concurrent budget resolution and not be transferred from amounts in the budget of any other agency of the executive branch, but instead should be an overall increase in the budget for the Department of Defense and the discretionary spending limits in the Balanced Budget Act of 1997.

SEC. 1203. PRESIDENTIAL REPORTS.

(a) REQUIRED REPORTS.—The President shall ensure that the semiannual reports required by section 7(b) of the general provisions of chapter I of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 64) are submitted to Congress in a timely manner as long as United States ground combat forces continue to participate in the Stabilization Force (SFOR). In addition, whenever the President submits to Congress a request for funds for continued operations of United States forces in Bosnia and Herzegovina, the President shall submit a supplemental report providing information to update Congress on developments since the last semiannual report.

(b) REQUIRED INFORMATION.—In addition to the information required by the section referred to in subsection (a) to be included in a report under that section, each report under that section or under subsection (a) shall include the following:

(1) The expected duration of the deployment of United States ground combat forces in Bosnia and Herzegovina in support of implementation of the benchmarks set forth in the President's report of March 3, 1998 (referred to in section 1201(5)) for achieving a sustainable peace process.

(2) The percentage of those benchmarks that have been completed as of the date of the report, the percentage that are

expected to be completed within the next reporting period, and the expected time for completion of the remaining tasks.

(3) The status of the NATO force of gendarmes or paramilitary police, including the mission of the force, the composition of the force, and the extent, if any, to which members of the Armed Forces of the United States are participating (or are to participate) in the force.

(4) The military and nonmilitary missions that the President has directed for United States forces in Bosnia and Herzegovina, including a specific discussion of—

(A) the mission of those forces, if any, in connection with the pursuit and apprehension of war criminals;

(B) the mission of those forces, if any, in connection with civilian police functions;

(C) the mission of those forces, if any, in connection with the resettlement of refugees; and

(D) the missions undertaken by those forces, if any, in support of international and local civilian authorities.

(5) An assessment of the risk for the United States forces in Bosnia and Herzegovina, including, for each mission identified pursuant to paragraph (4), the assessment of the Chairman of the Joint Chiefs of Staff regarding the nature and level of risk of the mission for the safety and well-being of United States military personnel.

(6) An assessment of the cost to the United States, by fiscal year, of carrying out the missions identified pursuant to paragraph (4) and a detailed projection of any additional funding that will be required by the Department of Defense to meet mission requirements for those operations for the remainder of the fiscal year.

(7) A joint assessment by the Secretary of Defense and the Secretary of State of the status of planning for—

(A) the assumption of all remaining military missions inside Bosnia and Herzegovina by European military and paramilitary forces; and

(B) the establishment and support of a forward-based United States rapid response force outside of Bosnia and Herzegovina that would be capable of deploying rapidly to defeat military threats to a European follow-on force inside Bosnia and Herzegovina and of providing whatever logistical, intelligence, and air support is needed to ensure that a European follow-on force is fully capable of accomplishing its missions under the Dayton Accords.

SEC. 1204. SECRETARY OF DEFENSE REPORTS ON OPERATIONS IN BOSNIA AND HERZEGOVINA.

(a) REPORT ON EFFECTS ON CAPABILITIES OF UNITED STATES MILITARY FORCES.—Not later than December 15, 1998, the Secretary of Defense shall submit to the congressional defense committees a report on the effects of military operations in Bosnia and Herzegovina and the Balkans region on the capabilities of United States military forces. The report shall, in particular, describe the effects of those operations on the capability of United States military forces to conduct successfully two nearly simultaneous major theater wars as specified in current Defense Planning Guidance

and in accordance with the deployment timelines called for in the war plans of the commanders of the unified combatant commands.

(b) ADDITIONAL REPORTS.—Whenever the number of United States ground combat forces in Bosnia and Herzegovina increases or decreases by 20 percent or more compared to the number of such forces as of the most recent previous report under this section, the Secretary shall submit an additional report as specified in subsection (a). Any such additional report shall be submitted within 30 days of the date on which the requirement to submit the report becomes effective under the preceding sentence.

(c) MATTERS TO BE INCLUDED.—The Secretary shall include in each report under this section information with respect to the effects of military operations in Bosnia and Herzegovina and the Balkans region on the capabilities of United States military forces to conduct successfully two nearly simultaneous major theater wars as specified in current Defense Planning Guidance and in accordance with the deployment timelines called for in the war plans of the commanders of the unified combatant commands. Such information shall include information on the effects of those operations on anticipated deployment plans for major theater wars in Southwest Asia or on the Korean peninsula, including the following:

(1) Deficiencies or delays in deployment of strategic lift, logistics support and infrastructure, ammunition (including precision guided munitions), support forces, intelligence assets, follow-on forces used for planned counteroffensives, and similar forces.

(2) Additional planned reserve component mobilization, including specific units to be ordered to active duty and required dates for activation of presidential call-up authority.

(3) Specific plans and timelines for redeployment of United States forces from Bosnia and Herzegovina, the Balkans region, or supporting forces in the region, to both the first and second major theater war.

(4) Preventative actions or deployments involving United States forces in Bosnia and Herzegovina and the Balkans region that would be taken in the event of a single theater war to deter the outbreak of a second theater war.

(5) Specific plans and timelines to replace forces deployed to Bosnia and Herzegovina, the Balkans region, or the surrounding region to maintain United States military presence.

(6) An assessment, undertaken in consultation with the Chairman of the Joint Chiefs of Staff and the commanders of the unified combatant commands, of the level of increased risk to successful conduct of the major theater wars and the maintenance of security and stability in Bosnia and Herzegovina and the Balkans region, by the requirement to redeploy forces from Bosnia and the Balkans in the event of a major theater war.

SEC. 1205. DEFINITIONS.

As used in this subtitle:

(1) DAYTON PEACE ACCORDS.—The term "Dayton Peace Accords" means the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed by the parties in Dayton,

Ohio, on November 21, 1995, and signed in Paris on December 14, 1995.

(2) STABILIZATION FORCE.—The term "Stabilization Force" means the NATO-led force in Bosnia and Herzegovina and other countries in the region (referred to as "SFOR"), authorized under United Nations Security Council Resolution 1088 (December 12, 1996).

(3) NATO.—The term "NATO" means the North Atlantic Treaty Organization.

* * * * * * *

Subtitle C—Matters Relating to NATO and Europe

SEC. 1221. [22 U.S.C. 1928] LIMITATION ON UNITED STATES SHARE OF COSTS OF NATO EXPANSION.

(a) LIMITATION.—The United States share of defined NATO expansion costs may not exceed the lesser of—

(1) the amount equal to 25 percent of those costs; or

(2) $2,000,000,000.

(b) DEFINED NATO EXPANSION COSTS.—For purposes of subsection (a), the term "defined NATO expansion costs" means the commonly funded costs of the North Atlantic Treaty Organization (NATO) during fiscal years 1999 through 2011 for enlargement of NATO due to the admission to NATO of Poland, Hungary, and the Czech Republic.

* * * * * * *

SEC. 1223. [22 U.S.C. 1928 note] REPORTS ON THE DEVELOPMENT OF THE EUROPEAN SECURITY AND DEFENSE IDENTITY.

(a) REQUIREMENT FOR REPORTS.—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 in accordance with this section reports on the development of the European Security and Defense Identity (ESDI) within the NATO Alliance that would enable the Western European Union (WEU), with the consent of the NATO Alliance, to assume the political control and strategic direction of NATO assets and capabilities made available by the Alliance.

(b) REPORTS TO BE SUBMITTED.—The reports required to be submitted under subsection (a) are as follows:

(1) An initial report, submitted not later than December 15, 1998, that contains a discussion of the actions taken, and the plans for future actions, to build the European Security and Defense Identity, together with the matters required under subsection (c).

(2) A semiannual report on the progress made toward establishing the European Security and Defense Identity, submitted not later than June 15 and December 15 of each year after 1998.

(c) CONTENT OF REPORTS.—The Secretary shall include in each report under this section the following:

(1) A discussion of the arrangements between NATO and the Western European Union for the release, transfer, monitoring, return, and recall of NATO assets and capabilities.

(2) A discussion of the development of such planning and other capabilities by the Western European Union that are necessary to provide political control and strategic direction of NATO assets and capabilities.

(3) A discussion of the development of terms of reference for the Deputy Supreme Allied Commander, Europe, with respect to the European Security and Defense Identity.

(4) A discussion of the arrangements for the assignment or appointment of NATO officers to serve in two positions concurrently (commonly referred to as "dual-hatting").

(5) A discussion of the development of the Combined Joint Task Force (CJTF) concept, including lessons-learned from the NATO-led Stabilization Force in Bosnia.

(6) Identification within the NATO Alliance of the types of separable but not separate capabilities, assets, and support assets for Western European Union-led operations.

(7) Identification of separable but not separate headquarters, headquarters elements, and command positions for command and conduct of Western European Union-led operations.

(8) The conduct by NATO, at the request of and in coordination with the Western European Union, of military planning and exercises for illustrative missions.

(9) A discussion of the arrangements between NATO and the Western European Union for the sharing of information, including intelligence.

(10) Such other information as the Secretary considers useful for a complete understanding of the establishment of the European Security and Defense Identity within the NATO Alliance.

(d) TERMINATION OF REPORTING REQUIREMENT.—The requirement to submit reports under subsection (b)(2) terminates upon the submission by the Secretary under that subsection of a report in which the Secretary states that the European Security and Defense Identity has been fully established.

Subtitle D—Other Matters

SEC. 1231. [10 U.S.C. 405 note] LIMITATION ON ASSIGNMENT OF UNITED STATES FORCES FOR CERTAIN UNITED NATIONS PURPOSES.

(a) LIMITATION ON PARTICIPATION IN UNITED NATIONS RAPIDLY DEPLOYABLE MISSION HEADQUARTERS.—If members of the Armed Forces are assigned during fiscal year 1999 to the United Nations Rapidly Deployable Mission Headquarters, the number of members so assigned may not exceed eight at any time during that year.

(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.

SEC. 1232. [10 U.S.C. 111 note] PROHIBITION ON RESTRICTION OF ARMED FORCES UNDER KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no provision of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to such protocol, shall restrict the training or operations of the United States Armed Forces or limit the military equipment procured by the United States Armed Forces.

(b) WAIVER.—A provision of law may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that such provision of law modifies or supersedes the provisions of this section.

(c) MATTERS NOT AFFECTED.—Nothing in this section shall be construed to preclude the Department of Defense from implementing any measure to achieve efficiencies or for any other reason independent of the Kyoto Protocol.

* * * * * * *

SEC. 1237. [50 U.S.C. 1701 note] APPLICATION OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO COMMUNIST CHINESE MILITARY COMPANIES.

(a) PRESIDENTIAL AUTHORITY.—

(1) IN GENERAL.—The President may exercise IEEPA authorities (other than authorities relating to importation) without regard to section 202 of the International Emergency Economic Powers Act (50 U.S.C. 1701) in the case of any commercial activity in the United States by a person that is on the list published under subsection (b).

(2) PENALTIES.—The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under paragraph (1).

(3) IEEPA AUTHORITIES.—For purposes of paragraph (1), the term "IEEPA authorities" means the authorities set forth in section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)).

(b) DETERMINATION AND REPORTING OF COMMUNIST CHINESE MILITARY COMPANIES OPERATING IN UNITED STATES.—

(1) INITIAL DETERMINATION AND REPORTING.—Not later than March 1, 2001, the Secretary of Defense shall make a determination of those persons operating directly or indirectly in the United States or any of its territories and possessions that are Communist Chinese military companies and shall submit a list of those persons in classified and unclassified form to the following:

(A) The Committee on Armed Services of the House of Representatives.

(B) The Committee on Armed Services of the Senate.

(C) The Secretary of State.

(D) The Secretary of the Treasury.

(E) The Attorney General.

(F) The Secretary of Commerce.
(G) The Secretary of Energy.
(H) The Director of Central Intelligence.

(2) ANNUAL REVISIONS TO THE LIST.—The Secretary of Defense shall make additions or deletions to the list submitted under paragraph (1) on an annual basis based on the latest information available and shall submit the updated list not later than February 1, each year to the committees and officers specified in paragraph (1).

(3) CONSULTATION.—The Secretary of Defense shall consult with the following officers in carrying out paragraphs (1) and (2):

(A) The Attorney General.
(B) The Director of Central Intelligence.
(C) The Director of the Federal Bureau of Investigation.

(4) COMMUNIST CHINESE MILITARY COMPANY.—For purposes of making the determination required by paragraph (1) and of carrying out paragraph (2), the term "Communist Chinese military company" means—

(A) any person identified in the Defense Intelligence Agency publication numbered VP–1920–271–90, dated September 1990, or PC–1921–57–95, dated October 1995, and any update of those publications for the purposes of this section; and

(B) any other person that—

(i) is owned or controlled by the People's Liberation Army; and

(ii) is engaged in providing commercial services, manufacturing, producing, or exporting.

(c) PEOPLE'S LIBERATION ARMY.—For purposes of this section, the term "People's Liberation Army" means the land, naval, and air military services, the police, and the intelligence services of the Communist Government of the People's Republic of China, and any member of any such service or of such police.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

SEC. 1301. [22 U.S.C. 5952 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—(1) For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note) (as amended by paragraph (2)).

(2) Section 1501(b)(3) of such Act is amended by inserting "materials," after "components,".

(b) FISCAL YEAR 1999 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 1999 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the amounts authorized to be appropriated to the Department of Defense for fiscal year 1999 in section 301(23), $440,400,000 shall be available to carry out Cooperative Threat Reduction programs, of which not more than the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $142,400,000.

(2) For strategic nuclear arms elimination in Ukraine, $47,500,000.

(3) For activities to support warhead dismantlement processing in Russia, $9,400,000.

(4) For activities associated with chemical weapons destruction in Russia, $88,400,000.

(5) For weapons transportation security in Russia, $10,300,000.

(6) For planning, design, and construction of a storage facility for Russian fissile material, $60,900,000.

(7) For weapons storage security in Russia, $41,700,000.

(8) For development of a cooperative program with the Government of Russia to eliminate the production of weapons grade plutonium at Russian reactors, $29,800,000.

(9) For biological weapons proliferation prevention activities in Russia, $2,000,000.

(10) For activities designated as Other Assessments/Administrative Support, $8,000,000.

(b) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) If the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may, subject to paragraphs (2) and (3), obligate amounts for the purposes stated in any of the paragraphs of subsection (a) in excess of the amount specified for those purposes in that paragraph. However, the total amount obligated for the purposes stated in the paragraphs in subsection (a) may not by reason of the use of the authority provided in the preceding sentence exceed the sum of the amounts specified in those paragraphs.

(2) An obligation for the purposes stated in any of the paragraphs in subsection (a) in excess of the amount specified in that paragraph may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts appropriated for the purposes stat-

ed in any of paragraphs (3) through (10) of subsection (a) in excess of 115 percent of the amount stated in those paragraphs.

SEC. 1303. PROHIBITION ON USE OF FUNDS FOR SPECIFIED PURPOSES.

(a) IN GENERAL.—No fiscal year 1999 Cooperative Threat Reduction funds, and no funds appropriated for Cooperative Threat Reduction programs for any prior fiscal year and remaining available for obligation, may be obligated or expended for any of the following purposes:

(1) Conducting with Russia any peacekeeping exercise or other peacekeeping-related activity.

(2) Provision of housing.

(3) Provision of assistance to promote environmental restoration.

(4) Provision of assistance to promote job retraining.

(b) LIMITATION WITH RESPECT TO DEFENSE CONVERSION ASSISTANCE.—None of the funds appropriated pursuant to this Act may be obligated or expended for the provision of assistance to Russia or any other state of the former Soviet Union to promote defense conversion.

SEC. 1304. [50 U.S.C. 5952 note] LIMITATION ON USE OF FUNDS FOR CHEMICAL WEAPONS DESTRUCTION ACTIVITIES IN RUSSIA.

(a) LIMITATION.—Subject to the limitation in section 1405(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1961), no funds authorized to be appropriated for Cooperative Threat Reduction programs under this Act or any other Act may be obligated or expended for chemical weapons destruction activities in Russia (including activities for the planning, design, or construction of a chemical weapons destruction facility or for the dismantlement of an existing chemical weapons production facility) until the President submits to Congress a written certification described in subsection (b).

(b) PRESIDENTIAL CERTIFICATION.—A certification under this subsection is either of the following certifications by the President:

(1) A certification that—

(A) Russia is making reasonable progress toward the implementation of the Bilateral Destruction Agreement;

(B) the United States and Russia have made substantial progress toward the resolution, to the satisfaction of the United States, of outstanding compliance issues under the Wyoming Memorandum of Understanding and the Bilateral Destruction Agreement; and

(C) Russia has fully and accurately declared all information regarding its unitary and binary chemical weapons, chemical weapons facilities, and other facilities associated with chemical weapons.

(2) A certification that the national security interests of the United States could be undermined by a policy of the United States not to carry out chemical weapons destruction activities under Cooperative Threat Reduction programs for which funds are authorized to be appropriated under this Act or any other Act for fiscal year 1999.

(c) DEFINITIONS.—In this section:

(1) The term "Bilateral Destruction Agreement" means the Agreement Between the United States of America and the Union of Soviet Socialist Republics on Destruction and Nonproduction of Chemical Weapons and on Measures to Facilitate the Multilateral Convention on Banning Chemical Weapons signed on June 1, 1990.

(2) The term "Wyoming Memorandum of Understanding" means the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding a Bilateral Verification Experiment and Data Exchange Related to Prohibition on Chemical Weapons, signed at Jackson Hole, Wyoming, on September 23, 1989.

SEC. 1305. LIMITATION ON USE OF FUNDS FOR BIOLOGICAL WEAPONS PROLIFERATION PREVENTION ACTIVITIES IN RUSSIA.

No fiscal year 1999 Cooperative Threat Reduction funds may be obligated or expended for biological weapons proliferation prevention activities in Russia until 15 days after the date on which the Secretary submits to the congressional defense committees a report on—

(1) whether Cooperative Threat Reduction funds provided for cooperative research activities at biological research institutes in Russia have been used—

(A) to support activities to develop new strains of anthrax; or

(B) for any purpose inconsistent with the objectives of providing such funds; and

(2) the new strains of anthrax alleged to have been developed at a biological research institute in Russia and any efforts by the United States to examine such strains.

SEC. 1306. COOPERATIVE COUNTER PROLIFERATION PROGRAM.

(a) IN GENERAL.—Of the amount authorized to be appropriated in section 1302 (other than the amounts authorized to be appropriated in subsections (a)(1) and (a)(2) of that section) and subject to the limitations in that section and subsection (b), the Secretary of Defense may provide a country of the former Soviet Union with emergency assistance for removing or obtaining from that country—

(1) weapons of mass destruction; or

(2) materials, equipment, or technology related to the development or delivery of weapons of mass destruction.

(b) CERTIFICATION REQUIRED.—(1) The Secretary may not provide assistance under subsection (a) until 15 days after the date that the Secretary submits to the congressional defense committees a certification in writing that the weapons, materials, equipment, or technology described in that subsection meet each of the following requirements:

(A) The weapons, materials, equipment, or technology are at risk of being sold or otherwise transferred to a restricted foreign state or entity.

(B) The transfer of the weapons, materials, equipment, or technology would pose a significant near-term threat to the national security interests of the United States or would signifi-

cantly advance a foreign country's weapon program that threatens the national security interests of the United States.

(C) Other options for securing or otherwise preventing the transfer of the weapons, materials, equipment, or technology have been considered and rejected as ineffective or inadequate.

(2) The 15-day notice requirement in paragraph (1) may be waived if the Secretary determines that compliance with the requirement would compromise the national security interests of the United States. In such case, the Secretary shall promptly notify the congressional defense committees of the circumstances regarding such determination in advance of providing assistance under subsection (a) and shall submit the certification required not later than 30 days after providing such assistance.

(c) CONTENT OF CERTIFICATIONS.—Each certification required under subsection (b) shall contain information on the following with respect to the assistance being provided:

(1) The specific assistance provided and the purposes for which the assistance is being provided.

(2) The sources of funds for the assistance.

(3) Whether any assistance is being provided by any other Federal department or agency.

(4) The options considered and rejected for preventing the transfer of the weapons, materials, equipment, or technology, as described in subsection (b)(1)(C).

(5) Whether funding was requested by the Secretary from other Federal departments or agencies.

(6) Any additional information that the Secretary determines is relevant to the assistance being provided.

(d) ADDITIONAL SOURCES OF FUNDING.—The Secretary may request assistance and accept funds from other Federal departments or agencies in carrying out this section.

(e) DEFINITIONS.—In this section:

(1) The term "restricted foreign state or entity", with respect to weapons, materials, equipment, or technology covered by a certification or notification of the Secretary of Defense under subsection (b), means—

(A) any foreign country the government of which has repeatedly provided support for acts of international terrorism, as determined by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371); or

(B) any foreign state or entity that the Secretary of Defense determines would constitute a military threat to the United States, its allies, or interests, if that foreign state or entity were to possess the weapons, materials, equipment, or technology.

(2) The term "weapons of mass destruction" has the meaning given that term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 50 U.S.C. 2302(1)).

SEC. 1307. [50 U.S.C. 5952 note] REQUIREMENT TO SUBMIT SUMMARY OF AMOUNTS REQUESTED BY PROJECT CATEGORY.

(a) SUMMARY REQUIRED.—The Secretary of Defense shall submit to Congress as part of the Secretary's annual budget request to Congress—

(1) a descriptive summary, with respect to the appropriations requested for Cooperative Threat Reduction programs for the fiscal year after the fiscal year in which the summary is submitted, of the amounts requested for each project category under each Cooperative Threat Reduction program element; and

(2) a descriptive summary, with respect to appropriations for Cooperative Threat Reduction programs for the fiscal year in which the list is submitted and the previous fiscal year, of the amounts obligated or expended, or planned to be obligated or expended, for each project category under each Cooperative Threat Reduction program element.

(b) DESCRIPTION OF PURPOSE AND INTENT.—The descriptive summary required under subsection (a) shall include a narrative description of each program and project category under each Cooperative Threat Reduction program element that explains the purpose and intent of the funds requested.

SEC. 1308. REPORT ON BIOLOGICAL WEAPONS PROGRAMS IN RUSSIA.

(a) REPORT.—Not later than March 1, 1999, the Secretary of Defense shall submit to the congressional defense committees a report, in classified and unclassified forms, containing—

(1) an assessment of the extent of compliance by Russia with international agreements relating to the control of biological weapons; and

(2) a detailed evaluation of the potential political and military costs and benefits of collaborative biological pathogen research efforts by the United States and Russia.

(b) CONTENT OF REPORT.—The report required under subsection (a) shall include the following:

(1) An evaluation of the extent of the control and oversight by the Government of Russia over the military and civilian-military biological warfare programs formerly controlled or overseen by states of the former Soviet Union.

(2) The extent and scope of continued biological warfare research, development, testing, and production in Russia, including the sites where such activity is occurring and the types of activity being conducted.

(3) An assessment of compliance by Russia with the terms of the Biological Weapons Convention.

(4) An identification and assessment of the measures taken by Russia to comply with the obligations assumed under the Joint Statement on Biological Weapons, agreed to by the United States, the United Kingdom, and Russia on September 14, 1992.

(5) A description of the extent to which Russia has permitted individuals from the United States or other countries to visit military and nonmilitary biological research, development, testing, and production sites in order to resolve ambiguities regarding activities at such sites.

(6) A description of the information provided by Russia about its biological weapons dismantlement efforts to date.

(7) An assessment of the accuracy and comprehensiveness of declarations by Russia regarding its biological weapons activities.

(8) An identification of collaborative biological research projects carried out by the United States and Russia for which Cooperative Threat Reduction funds have been used.

(9) An evaluation of the political and military utility of prior, existing, and prospective cooperative biological pathogen research programs carried out between the United States and Russia, and an assessment of the impact of such programs on increasing Russian military transparency with respect to biological weapons activities.

(10) An assessment of the political and military utility of the long-term collaborative program advocated by the National Academy of Sciences in its October 27, 1997 report, "Controlling Dangerous Pathogens: A Blueprint for U.S.-Russian Cooperation".

SEC. 1309. REPORT ON INDIVIDUALS WITH EXPERTISE IN FORMER SOVIET WEAPONS OF MASS DESTRUCTION PROGRAMS.

Not later than January 31, 1999, the Secretary of Defense, in consultation with the Secretary of State, the Secretary of Energy, and any other appropriate officials, shall submit to the congressional defense committees a report on the number of individuals in the former Soviet Union who have significant expertise in the research, development, production, testing, and operational employment of ballistic missiles and weapons of mass destruction. The report shall contain the following:

(1) A listing of the specific expertise of the individuals, by category and discipline.

(2) An assessment of which categories of expertise would pose the greatest risks to the security of the United States if that expertise were transferred to potentially hostile states.

(3) An estimate, by category, of the number of the individuals in paragraph (1) who are fully or partly employed at the time the report is submitted by the military-industrial complex of the former Soviet Union, the number of such individuals who are fully employed at the time the report is submitted by commercial ventures outside the military-industrial complex of the former Soviet Union, and the number of such individuals who are unemployed and underemployed at the time the report is submitted.

(4) An identification of the nature, scope, and cost of activities conducted by the United States and other countries to assist in the employment in nonproliferation and nonmilitary-related endeavors and enterprises of individuals involved in the weapons complex of the former Soviet Union, and which categories of individuals are being targeted in these efforts.

(5) An assessment of whether the activities identified under paragraph (4) should be reduced, maintained, or expanded.

e. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE XII—MATTERS RELATING TO OTHER NATIONS

* * * * * * *

Subtitle A—United States Armed Forces in Bosnia and Herzegovina

SEC. 1201. FINDINGS.

The Congress finds the following:

(1) United States Armed Forces were deployed to the Republic of Bosnia and Herzegovina as part of the North Atlantic Treaty Organization (NATO) Implementation Force (IFOR) to implement the military aspects of the Dayton Peace Agreement.

(2) The military aspects of the Dayton Peace Agreement have been successfully implemented to date with the military forces of the warring factions successfully separated and a cessation in the hostilities that resulted in the deaths of hundreds of thousands of Bosnians.

(3) Implementation of the civil aspects of the Dayton Peace Agreement has lagged far behind the schedule for such implementation envisioned in the Agreement with the result that United States Armed Forces have undertaken a prolonged engagement in the Republic of Bosnia and Herzegovina.

(4) On December 13, 1995, the President stated in a letter to Congress, "NATO and U.S. military commanders believe, and I expect, that the military mission can be accomplished in about a year. Twelve months will allow IFOR time to complete the military tasks assigned in the Dayton agreement and to establish a secure environment, in which political and economic reconstruction efforts by the parties and international civilian agencies can take hold. Within one year, we expect that the military provisions of the Dayton agreement will have been carried out, implementation of the civilian aspects and economic reconstruction will have been firmly launched, free elections will have been held under international supervision and a stable military balance will have been established."

(5) Notwithstanding a number of assurances relating to the accomplishment of the military mission in the Republic of Bosnia and Herzegovina by December 1996, the President, on November 15, 1996, announced his decision to extend the presence of United States forces in the Republic of Bosnia and Herzegovina to participate in the NATO Stabilization Force (SFOR) until June 1998.

(6) Despite initial projections by the Department of Defense that the costs of United States operations in the Republic of Bosnia and Herzegovina would total $1,500,000,000, the projected cost of United States operations in the Republic of Bosnia and Herzegovina through June 1998 is estimated to exceed $7,000,000,000.

(7) The fiscal year 1998 estimate of the Department of Defense for operations in the Republic of Bosnia and Herzegovina assumes that the level of military forces participating in SFOR will be reduced soon after the start of the fiscal year.

(8) The President and the Secretary of Defense have stated that United States forces are to be withdrawn from the Republic of Bosnia and Herzegovina by the end of June 1998.

SEC. 1202. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) United States ground combat forces should not participate in a follow-on force in the Republic of Bosnia and Herzegovina after June 1998;

(2) the European Security and Defense Identity, which, as facilitated by the Combined Joint Task Forces concept, enables the Western European Union, with the consent of the North Atlantic Alliance, to assume political control and strategic direction of NATO assets made available for the Alliance, may be an ideal instrument for a follow-on force for the Republic of Bosnia and Herzegovina;

(3) a NATO-led force without the participation of United States ground combat forces in the Republic of Bosnia and Herzegovina may be suitable for a follow-on force for the Republic of Bosnia and Herzegovina if the European Security and Defense Identity is not sufficiently developed or is otherwise considered inappropriate for such a mission;

(4) the United States may decide to provide appropriate support to a Western European Union-led or NATO-led follow-on force, including command and control, intelligence, logistics, and, if necessary, a ready reserve force in the region;

(5) the President should inform our European NATO allies of this expression of the sense of Congress and should urge them strongly to undertake preparations for a Western European Union-led or NATO-led force as a follow-on force to the NATO-led SFOR if needed to maintain peace and stability in the Republic of Bosnia and Herzegovina; and

(6) the President should consult with the Congress with respect to any support to be provided to a Western European Union-led or NATO-led follow-on force in the Republic of Bosnia and Herzegovina after June 30, 1998.

SEC. 1203. [10 U.S.C. 114 note] WITHDRAWAL OF UNITED STATES GROUND FORCES FROM REPUBLIC OF BOSNIA AND HERZEGOVINA .

(a) LIMITATION.—No funds appropriated or otherwise made available for the Department of Defense for fiscal year 1998 or any subsequent fiscal year may be used for the deployment of any United States ground combat forces in the Republic of Bosnia and Herzegovina after June 30, 1998, unless the President, not later than May 15, 1998, and after consultation with the bipartisan leadership of the two Houses of Congress, transmits to Congress a certification—

(1) that the continued presence of United States ground combat forces, after June 30, 1998, in the Republic of Bosnia

and Herzegovina is required in order to meet the national security interests of the United States; and

(2) that after June 30, 1998, it will remain United States policy that United States ground forces will not serve as, or be used as, civil police in the Republic of Bosnia and Herzegovina.

(b) REPORT.—The President shall submit with the certification under subsection (a) a report that includes the following:

(1) The reasons why that presence is in the national security interest of the United States.

(2) The number of United States military personnel to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after that date.

(3) The expected duration of any such deployment.

(4) The mission and objectives of the United States Armed Forces to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after June 30, 1998.

(5) The exit strategy of such forces.

(6) The incremental costs associated with any such deployment.

(7) The effect of such deployment on the morale, retention, and effectiveness of United States armed forces.

(8) A description of the forces from other nations involved in a follow-on mission, shown on a nation-by-nation basis.

(9) A description of the command and control arrangement established for United States forces involved in a follow-on mission.

(10) An assessment of the expected threats to United States forces involved in a follow-on mission.

(11) The plan for rotating units and personnel to and from the Republic of Bosnia and Herzegovina during a follow-on mission, including the level of participation by reserve component units and personnel.

(12) The mission statement and operational goals of the United States forces involved in a follow-on mission.

(c) REQUEST FOR SUPPLEMENTAL APPROPRIATIONS.—The President shall transmit to Congress with a certification under subsection (a) a supplemental appropriations request for the Department of Defense for such amounts as are necessary for the costs of any continued deployment beyond June 30, 1998.

(d) CONSTRUCTION WITH PRESIDENT'S CONSTITUTIONAL AUTHORITY.—Nothing in this section shall be deemed to restrict the authority of the President under the Constitution to protect the lives of United States citizens.

(e) CONSTRUCTION WITH APPROPRIATIONS PROVISION.—The provisions of this section are enacted, and shall be applied, as supplemental to (and not in lieu of) the provisions of section 8132 of the Department of Defense Appropriations Act, 1998 (Public Law 105–56).

SEC. 1204. SECRETARY OF DEFENSE REPORTS ON TASKS CARRIED OUT BY UNITED STATES FORCES.

(a) REQUIREMENT FOR TWO REPORTS.—The Secretary of Defense shall submit to the congressional defense committees—

(1) not later than December 15, 1997, a report identifying each activity being carried out, as of December 1, 1997, by covered United States forces in the Republic of Bosnia and Herzegovina; and

(2) not later than April 15, 1998, a report identifying each activity being carried out, as of April 1, 1998, by covered United States forces in the Republic of Bosnia and Herzegovina.

(b) COVERED UNITED STATES FORCES.—For purposes of this section, covered United States forces in the Republic of Bosnia and Herzegovina are United States ground forces in the Republic of Bosnia and Herzegovina that are assigned to the multinational peacekeeping force known as the Stabilization Force (SFOR) or any other multinational peacekeeping force that is the successor to the SFOR.

(c) MATTERS TO BE INCLUDED.—The Secretary shall include in each report under subsection (a), for each activity identified under that subsection, the following:

(1) The number of United States military personnel involved in the performance of that activity.

(2) Whether forces assigned to the SFOR (or successor multinational peacekeeping force) from other nations also participated in that activity.

(3) The justification for using military forces rather than civilian organizations to perform that activity.

(4) In the case of activities that (as determined by the Secretary) are considered to be supporting tasks, as that term is used in paragraph 3 of Article VI of Annex 1-A to the General Framework Agreement for Peace in Bosnia and Herzegovina, the justification for using military forces.

(5) The likelihood that each such activity will have to be carried out by United States military forces after June 30, 1998.

SEC. 1205. PRESIDENTIAL REPORT ON SITUATION IN REPUBLIC OF BOSNIA AND HERZEGOVINA.

(a) REQUIREMENT.—Not later than February 1, 1998, the President shall submit to Congress a report on the political and military conditions in the Republic of Bosnia and Herzegovina. The report shall be submitted in both classified and unclassified form.

(b) MATTERS TO BE INCLUDED.—The report under subsection (a) shall include a discussion of the following:

(1) An assessment of the progress made in implementing the civil, economic, and political aspects of the Dayton Peace Agreement.

(2) An identification of the specific steps taken to transfer the United States portion of the peacekeeping mission in the Republic of Bosnia and Herzegovina to forces of the member-states of the Western European Union or to a NATO-led force without the participation of United States ground combat forces in the Republic of Bosnia and Herzegovina.

(3) A detailed discussion of the proposed role and involvement of the United States in supporting peacekeeping activities in the Republic of Bosnia and Herzegovina following the

withdrawal of United States ground combat forces from the Republic of Bosnia and Herzegovina.

(4) A detailed explanation and timetable for carrying out the commitment to withdraw all United States ground forces from the Republic of Bosnia and Herzegovina by June 30, 1998, including the planned date of commencement and completion of the withdrawal.

(5) The military and political considerations that will affect the decision to carry out such a transition.

(6) Any plan to maintain or expand other Bosnia-related operations (such as the operations designated as Operation Deliberate Guard) if tensions in the Republic of Bosnia and Herzegovina remain sufficient to delay reductions of United States military forces participating in the Stabilization Force and the estimated cost associated with each such operation.

SEC. 1206. [10 U.S.C. 114 note] DEFINITIONS.

As used in this subtitle:

(1) DAYTON PEACE AGREEMENT.—The term "Dayton Peace Agreement" means the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed by the parties in Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995.

(2) IMPLEMENTATION FORCE.—The term "Implementation Force" means the NATO-led multinational military force in the Republic of Bosnia and Herzegovina (commonly referred to as "IFOR"), authorized under the Dayton Peace Agreement.

(3) STABILIZATION FORCE.—The term "Stabilization Force" means the NATO-led follow-on force to the Implementation Force in the Republic of Bosnia and Herzegovina and other countries in the region (commonly referred to as "SFOR"), authorized under United Nations Security Council Resolution 1088 (December 12, 1996).

(4) FOLLOW-ON MISSION.—The term "follow-on mission" means a mission involving the deployment of ground elements of the United States Armed Forces in the Republic of Bosnia and Herzegovina after June 30, 1998 (other than as described in section 1203(b)).

(5) NATO.—The term "NATO" means the North Atlantic Treaty Organization.

* * * * * * *

Subtitle C—Other Matters

SEC. 1221. [22 U.S.C. 1928 note] DEFENSE BURDENSHARING.

(a) EFFORTS TO INCREASE ALLIED BURDENSHARING.—The President shall seek to have each nation that has cooperative military relations with the United States (including security agreements, basing arrangements, or mutual participation in multinational military organizations or operations) take one or more of the following actions:

(1) For any nation in which United States military personnel are assigned to permanent duty ashore, increase its financial contributions to the payment of the nonpersonnel costs

incurred by the United States Government for stationing United States military personnel in that nation, with a goal of achieving by September 30, 2000, 75 percent of such costs. An increase in financial contributions by any nation under this paragraph may include the elimination of taxes, fees, or other charges levied on United States military personnel, equipment, or facilities stationed in that nation.

(2) Increase its annual budgetary outlays for national defense as a percentage of its gross domestic product by 10 percent or at least to a level commensurate to that of the United States by September 30, 1999.

(3) Increase its annual budgetary outlays for foreign assistance (to promote democratization, governmental accountability and transparency, economic stabilization and development, defense economic conversion, respect for the rule of law and internationally recognized human rights, and humanitarian relief efforts) by 10 percent or to provide such foreign assistance at an annual rate that is not less than one percent of its gross domestic product, by September 30, 1999.

(4) Increase the military assets (including personnel, equipment, logistics, support and other resources) that it contributes or has pledged to contribute to multinational military activities worldwide by 10 percent by September 30, 1999.

(b) AUTHORITIES TO ENCOURAGE ACTIONS BY UNITED STATES ALLIES.—In seeking the actions described in subsection (a) with respect to any nation, or in response to a failure by any nation to undertake one or more of such actions, the President may take any of the following measures to the extent otherwise authorized by law:

(1) Reduce the end strength level of members of the Armed Forces assigned to permanent duty ashore in that nation.

(2) Impose on that nation fees or other charges similar to those that such nation imposes on United States forces stationed in that nation.

(3) Reduce (through rescission, impoundment, or other appropriate procedures as authorized by law) the amount the United States contributes to the NATO Civil Budget, Military Budget, or Security Investment Program.

(4) Suspend, modify, or terminate any bilateral security agreement the United States has with that nation, consistent with the terms of such agreement.

(5) Reduce (through rescission, impoundment or other appropriate procedures as authorized by law) any United States bilateral assistance appropriated for that nation.

(6) Take any other action the President determines to be appropriate as authorized by law.

(c) REPORT ON PROGRESS IN INCREASING ALLIED BURDENSHARING.—Not later than March 1, 1999, the Secretary of Defense shall submit to Congress a report on—

(1) steps taken by other nations to complete the actions described in subsection (a);

(2) all measures taken by the President, including those authorized in subsection (b), to achieve the actions described in subsection (a);

(3) the difference between the amount allocated by other nations for each of the actions described in subsection (a) during the period beginning on October 1, 1996, and ending on September 30, 1997, and during the period beginning on October 1, 1997, and ending on September 30, 1998, or, in the case of any nation for which the data for such periods is inadequate, the difference between the amounts for the latest periods for which adequate data is available; and

(4) the budgetary savings to the United States that are expected to accrue as a result of the steps described under paragraph (1).

(d) REPORT ON NATIONAL SECURITY BASES FOR FORWARD DEPLOYMENT AND BURDENSHARING RELATIONSHIPS.—(1) In order to ensure the best allocation of budgetary resources, the President shall undertake a review of the status of elements of the United States Armed Forces that are permanently stationed outside the United States. The review shall include an assessment of the following:

(A) The alliance requirements that are to be found in agreements between the United States and other countries.

(B) The national security interests that support permanently stationing elements of the United States Armed Forces outside the United States.

(C) The stationing costs associated with the forward deployment of elements of the United States Armed Forces.

(D) The alternatives available to forward deployment (such as material prepositioning, enhanced airlift and sealift, or joint training operations) to meet such alliance requirements or national security interests, with such alternatives identified and described in detail.

(E) The costs and force structure configurations associated with such alternatives to forward deployment.

(F) The financial contributions that allies of the United States make to common defense efforts (to promote democratization, economic stabilization, transparency arrangements, defense economic conversion, respect for the rule of law, and internationally recognized human rights).

(G) The contributions that allies of the United States make to meeting the stationing costs associated with the forward deployment of elements of the United States Armed Forces.

(H) The annual expenditures of the United States and its allies on national defense, and the relative percentages of each nation's gross domestic product constituted by those expenditures.

(2) The President shall submit to Congress a report on the review under paragraph (1). The report shall be submitted not later than March 1, 1999, in classified and unclassified form.

* * * * * * *

f. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle F—Other Matters

* * * * * * *

SEC. 1082. [10 U.S.C. 168 note] 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.

* * * * * * *

SEC. 1084. [22 U.S.C. 1928 note] DEFENSE BURDENSHARING.

(a) EFFORTS TO INCREASE ALLIED BURDENSHARING.—The President shall seek to have each nation that has cooperative military relations with the United States (including security agreements, basing arrangements, or mutual participation in multinational military organizations or operations) take one or more of the following actions:

(1) Increase its financial contributions to the payment of the nonpersonnel costs incurred by the United States Government for stationing United States military personnel in that nation, with a goal of achieving by September 30, 2000, 75 percent of such costs. An increase in financial contributions by any nation under this paragraph may include the elimination of taxes, fees, or other charges levied on United States military personnel, equipment, or facilities stationed in that nation.

(2) Increase its annual budgetary outlays for national defense as a percentage of its gross domestic product by 10 percent or at least to a level commensurate to that of the United States by September 30, 1997.

(3) Increase its annual budgetary outlays for foreign assistance (to promote democratization, economic stabilization, transparency arrangements, defense economic conversion, respect for the rule of law, and internationally recognized human rights) by 10 percent or at least to a level commensurate to that of the United States by September 30, 1997.

(4) Increase the amount of military assets (including personnel, equipment, logistics, support and other resources) that it contributes, or would be prepared to contribute, to multinational military activities worldwide.

(b) AUTHORITIES TO ENCOURAGE ACTIONS BY UNITED STATES ALLIES.—In seeking the actions described in subsection (a) with respect to any nation, or in response to a failure by any nation to undertake one or more of such actions, the President may take any of the following measures to the extent otherwise authorized by law:

(1) Reduce the end strength level of members of the Armed Forces assigned to permanent duty ashore in that nation.

(2) Impose on that nation fees or other charges similar to those that such nation imposes on United States forces stationed in that nation.

(3) Reduce (through rescission, impoundment, or other appropriate procedures as authorized by law) the amount the United States contributes to the NATO Civil Budget, Military Budget, or Security Investment Program.

(4) Suspend, modify, or terminate any bilateral security agreement the United States has with that nation, consistent with the terms of such agreement.

(5) Reduce (through rescission, impoundment, or other appropriate procedures as authorized by law) any United States bilateral assistance appropriated for that nation.

(6) Take any other action the President determines to be appropriate as authorized by law.

(c) REPORT ON PROGRESS IN INCREASING ALLIED BURDENSHARING.—Not later than March 1, 1997, the Secretary of Defense shall submit to Congress a report on—

(1) steps taken by other nations to complete the actions described in subsection (a);

(2) all measures taken by the President, including those authorized in subsection (b), to achieve the actions described in subsection (a); and

(3) the budgetary savings to the United States that are expected to accrue as a result of the steps described under paragraph (1).

(d) REPORT ON NATIONAL SECURITY BASES FOR FORWARD DEPLOYMENT AND BURDENSHARING RELATIONSHIPS.—(1) In order to ensure the best allocation of budgetary resources, the President shall undertake a review of the status of elements of the United States Armed Forces that are permanently stationed outside the United States. The review shall include an assessment of the following:

(A) The alliance requirements that are to be found in agreements between the United States and other countries.

(B) The national security interests that support permanently stationing elements of the United States Armed Forces outside the United States.

(C) The stationing costs associated with the forward deployment of elements of the United States Armed Forces.

(D) The alternatives available to forward deployment (such as material prepositioning, enhanced airlift and sealift, or joint training operations) to meet such alliance requirements or national security interests, with such alternatives identified and described in detail.

(E) The costs and force structure configurations associated with such alternatives to forward deployment.

(F) The financial contributions that allies of the United States make to common defense efforts (to promote democratization, economic stabilization, transparency arrangements, defense economic conversion, respect for the rule of law, and internationally recognized human rights).

(G) The contributions that allies of the United States make to meeting the stationing costs associated with the forward deployment of elements of the United States Armed Forces.

(H) The annual expenditures of the United States and its allies on national defense, and the relative percentages of each nation's gross domestic product constituted by those expenditures.

(2) The President shall submit to Congress a report on the review under paragraph (1). The report shall be submitted not later than March 1, 1997, in classified and unclassified form.

(e) REPORT DATE.—Section 1003(c) of Public Law 98–515 is amended by striking out "each year" and inserting "by March 1, 1998, and every other year thereafter". [Note, the public law referred to in the amendment should have been Public Law 98–525, the Department of Defense Authorization Act, 1985.]

* * * * * * *

TITLE XV—COOPERATIVE THREAT REDUCTION WITH STATES OF FORMER SOVIET UNION

SEC. 1501. [50 U.S.C. 2362 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS.

(a) IN GENERAL.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in subsection (b).

(b) SPECIFIED PROGRAMS.—The programs referred to in subsection (a) are the following programs with respect to states of the former Soviet Union:

(1) Programs to facilitate the elimination, and the safe and secure transportation and storage, of nuclear, chemical, and other weapons and their delivery vehicles.

(2) Programs to facilitate the safe and secure storage of fissile materials derived from the elimination of nuclear weapons.

(3) Programs to prevent the proliferation of weapons, weapons components, materials, and weapons-related technology and expertise.

(4) Programs to expand military-to-military and defense contacts.

---

g. National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE XII—COOPERATIVE THREAT REDUCTION WITH STATES OF FORMER SOVIET UNION

SEC. 1201. [50 U.S.C. 5955 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS.

(a) IN GENERAL.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in subsection (b).

(b) SPECIFIED PROGRAMS.—The programs referred to in subsection (a) are the following programs with respect to states of the former Soviet Union:

(1) Programs to facilitate the elimination, and the safe and secure transportation and storage, of nuclear, chemical, and other weapons, fissile material suitable for use in nuclear weapons, and their delivery vehicles.

(2) Programs to facilitate the safe and secure storage of fissile materials derived from the elimination of nuclear weapons.

(3) Programs to prevent the proliferation of weapons, weapons components, and weapons-related technology and expertise.

(4) Programs to expand military-to-military and defense contacts.

* * * * * * *

SEC. 1205. [50 U.S.C. 5955 note] PRIOR NOTICE TO CONGRESS OF OBLIGATION OF FUNDS.

(a) ANNUAL REQUIREMENT.—(1) Not less than 15 days before any obligation of any funds appropriated for any fiscal year for a program specified under section 1201 as a Cooperative Threat Reduction program, the Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on that proposed obligation for that program for that fiscal year.

(2) The congressional committees referred to in paragraph (1) are the following:

(A) The Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

(B) The Committee on Armed Services, the Committee on International Relations, and the Committee on Appropriations of the House of Representatives.

(b) MATTERS TO BE SPECIFIED IN REPORTS.—Each such report shall specify—

(1) the activities and forms of assistance for which the Secretary of Defense plans to obligate funds;

(2) the amount of the proposed obligation; and

(3) the projected involvement (if any) of any department or agency of the United States (in addition to the Department of Defense) and of the private sector of the United States in the activities and forms of assistance for which the Secretary of Defense plans to obligate such funds.

SEC. 1206. [50 U.S.C. 5955 note] REPORT ON ACCOUNTING FOR UNITED STATES ASSISTANCE.

[Repealed by section 1308(g)(1)(C) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–343)]

* * * * * * *

TITLE XIII—MATTERS RELATING TO OTHER NATIONS

* * * * * * *

SEC. 1322. [50 U.S.C. APP. 2404 note] NATIONAL SECURITY IMPLICATIONS OF UNITED STATES EXPORT CONTROL POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Export controls remain an important element of the national security policy of the United States.

(2) It is in the national security interest that United States export control policy be effective in preventing the transfer, to potential adversaries or combatants of the United States, of technology that threatens the national security or defense of the United States.

(3) It is in the national security interest that the United States monitor aggressively the export of militarily critical technology in order to prevent its diversion to potential adversaries or combatants of the United States.

(4) The Department of Defense relies increasingly on commercial and dual-use technologies, products, and processes to support United States military capabilities and economic strength.

(5) The maintenance of the military advantage of the United States depends on effective export controls on dual-use items and technologies that are critical to the military capabilities of the Armed Forces.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Defense should evaluate license applications for the export of militarily critical commodities the export of which is controlled for national security reasons if those commodities are to be exported to certain countries of concern;

(2) the Secretary of Defense should identify the dual-use items and technologies that are critical to the military capabilities of the Armed Forces, including the military use made of such items and technologies;

(3) upon identification by the Secretary of Defense of the dual-use items and technologies referred to in paragraph (2), the President should ensure effective export controls or use unilateral export controls on dual-use items and technologies that are critical to the military capabilities of the Armed Forces (regardless of the availability of such items or technologies overseas) with respect to the countries that—

(A) pose a threat to the national security interests of the United States; and

(B) are not members in good standing of bilateral or multilateral agreements to which the United States is a party on the use of such items and technologies; and

(4) the President, upon recommendation of the Secretary of Defense, should ensure effective controls on the re-export by other countries of dual-use items and technologies that are critical to the military capabilities of the Armed Forces.

(c) ANNUAL REPORT.—(1) Not later than December 1 of each year through 1999, the President shall submit to the committees specified in paragraph (4) a report on the effect of the export control policy of the United States on the national security interests of the United States.

(2) The report shall include the following:

(A) A list setting forth each country determined by the Secretary of Defense, the intelligence community, and other appropriate agencies to be a rogue nation or potential adversary or combatant of the United States.

(B) For each country so listed, a list of—

(i) the categories of items that the United States currently prohibits for export to the country;

(ii) the categories of items that may be exported from the United States with an individual license, and in such cases, any licensing conditions normally required and the policy grounds used for approvals and denials; and

(iii) the categories of items that may be exported under a general license designated "G-DEST".

(C) For each category of items listed under subparagraph (B)—

(i) a statement whether a prohibition, control, or licensing requirement on a category of items is imposed pursuant to an international multilateral agreement or is unilateral;

(ii) a statement whether a prohibition, control, or licensing requirement on a category of items is imposed by the other members of an international agreement or is unilateral;

(iii) when the answer under either clause (i) or clause (ii) is unilateral, a statement concerning the efforts being made to ensure that the prohibition, control, or licensing requirement is made multilateral; and

(iv) a statement on what impact, if any, a unilateral prohibition is having, or would have, on preventing the rogue nation or potential adversary from attaining the items in question for military purposes.

(D) A description of United States policy on sharing satellite imagery that has military significance and a discussion of the criteria for determining the imagery that has that significance.

(E) A description of the relationship between United States policy on the export of space launch vehicle technology and the Missile Technology Control Regime.

(F) An assessment of United States efforts to support the inclusion of additional countries in the Missile Technology Control Regime.

(G) An assessment of the ongoing efforts made by potential participant countries in the Missile Technology Control Regime to meet the guidelines established by the Missile Technology Control Regime.

(H) A discussion of the history of the space launch vehicle programs of other countries, including a discussion of the military origins and purposes of such programs and the current level of military involvement in such programs.

(3) The President shall submit the report in unclassified form, but may include a classified annex.

(4) The committees referred to in paragraph (1) are the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(B) The Committee on National Security and the Committee on International Relations of the House of Representatives.

(5) For purposes of this subsection, the term "Missile Technology Control Regime" means the policy statement announced on April 16, 1987, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan to restrict sensitive missile-relevant transfers based on the Missile Technology Control Regime Annex, and any amendment thereto.

SEC. 1323. [50 U.S.C. APP. 2404 note] DEPARTMENT OF DEFENSE REVIEW OF EXPORT LICENSES FOR CERTAIN BIOLOGICAL PATHOGENS.

(a) DEPARTMENT OF DEFENSE REVIEW.—Any application to the Secretary of Commerce for a license for the export of a class 2, class 3, or class 4 biological pathogen to a country identified to the Secretary under subsection (c) as a country that is known or suspected to have a biological weapons program shall be referred to the Secretary of Defense for review. The Secretary of Defense shall notify the Secretary of Commerce within 15 days after receipt of an application under the preceding sentence whether the export of such biological pathogen pursuant to the license would be contrary to the national security interests of the United States.

(b) DENIAL OF LICENSE IF CONTRARY TO NATIONAL SECURITY INTEREST.—A license described in subsection (a) shall be denied by the Secretary of Commerce if it is determined that the export of such biological pathogen to that country would be contrary to the national security interests of the United States.

(c) IDENTIFICATION OF COUNTRIES KNOWN OR SUSPECTED TO HAVE A PROGRAM TO DEVELOP OFFENSIVE BIOLOGICAL WEAPONS.—(1) The Secretary of Defense shall determine, for the purposes of this section, those countries that are known or suspected to have a program to develop offensive biological weapons. Upon making such determination, the Secretary shall provide to the Secretary of Commerce a list of those countries.

(2) The Secretary of Defense shall update the list under paragraph (1) on a regular basis. Whenever a country is added to or deleted from such list, the Secretary shall notify the Secretary of Commerce.

(3) Determination under this subsection of countries that are known or suspected to have a program to develop offensive biological weapons shall be made in consultation with the Secretary of State and the intelligence community.

(d) DEFINITION.—For purposes of this section, the term "class 2, class 3, or class 4 biological pathogen" means any biological pathogen that is characterized by the Centers for Disease Control as a class 2, class 3, or class 4 biological pathogen.

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 1342. [18 U.S.C. 3181 note] JUDICIAL ASSISTANCE TO THE INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA AND TO THE INTERNATIONAL TRIBUNAL FOR RWANDA.

(a) SURRENDER OF PERSONS.—

(1) APPLICATION OF UNITED STATES EXTRADITION LAWS.—Except as provided in paragraphs (2) and (3), the provisions of chapter 209 of title 18, United States Code, relating to the extradition of persons to a foreign country pursuant to a treaty or convention for extradition between the United States and a foreign government, shall apply in the same manner and extent to the surrender of persons, including United States citizens, to—

(A) the International Tribunal for Yugoslavia, pursuant to the Agreement Between the United States and the International Tribunal for Yugoslavia; and

(B) the International Tribunal for Rwanda, pursuant to the Agreement Between the United States and the International Tribunal for Rwanda.

(2) EVIDENCE ON HEARINGS.—For purposes of applying section 3190 of title 18, United States Code, in accordance with paragraph (1), the certification referred to in that section may be made by the principal diplomatic or consular officer of the United States resident in such foreign countries where the International Tribunal for Yugoslavia or the International Tribunal for Rwanda may be permanently or temporarily situated.

(3) PAYMENT OF FEES AND COSTS.—(A) The provisions of the Agreement Between the United States and the International Tribunal for Yugoslavia and of the Agreement Between the United States and the International Tribunal for Rwanda shall apply in lieu of the provisions of section 3195 of title 18, United States Code, with respect to the payment of expenses arising from the surrender by the United States of a person to the International Tribunal for Yugoslavia or the International Tribunal for Rwanda, respectively, or from any proceedings in the United States relating to such surrender.

(B) The authority of subparagraph (A) may be exercised only to the extent and in the amounts provided in advance in appropriations Acts.

(4) NONAPPLICABILITY OF THE FEDERAL RULES.—The Federal Rules of Evidence and the Federal Rules of Criminal Procedure do not apply to proceedings for the surrender of persons to the International Tribunal for Yugoslavia or the International Tribunal for Rwanda.

(b) ASSISTANCE TO FOREIGN AND INTERNATIONAL TRIBUNALS AND TO LITIGANTS BEFORE SUCH TRIBUNALS.—Section 1782(a) of title 28, United States Code, is amended by inserting in the first sentence after "foreign or international tribunal" the following: ", including criminal investigations conducted before formal accusation".

(c) DEFINITIONS.—For purposes of this section:

(1) INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA.—The term "International Tribunal for Yugoslavia" means the International Tribunal for the Prosecution of Persons Responsible

for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia, as established by United Nations Security Council Resolution 827 of May 25, 1993.

(2) INTERNATIONAL TRIBUNAL FOR RWANDA.—The term "International Tribunal for Rwanda" means the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, as established by United Nations Security Council Resolution 955 of November 8, 1994.

(3) AGREEMENT BETWEEN THE UNITED STATES AND THE INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA.—The term "Agreement Between the United States and the International Tribunal for Yugoslavia" means the Agreement on Surrender of Persons Between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law in the Territory of the Former Yugoslavia, signed at The Hague, October 5, 1994.

(4) AGREEMENT BETWEEN THE UNITED STATES AND THE INTERNATIONAL TRIBUNAL FOR RWANDA.—The term "Agreement between the United States and the International Tribunal for Rwanda" means the Agreement on Surrender of Persons Between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, signed at The Hague, January 24, 1995.

SEC. 1343. SEMIANNUAL REPORTS CONCERNING UNITED STATES-PEOPLE'S REPUBLIC OF CHINA JOINT DEFENSE CONVERSION COMMISSION.

(a) REPORTS REQUIRED.—The Secretary of Defense shall submit to Congress a semiannual report on the United States-People's Republic of China Joint Defense Conversion Commission. Each such report shall include the following:

(1) A description of the extent to which the activities conducted in, through, or as a result of the Commission could have directly or indirectly assisted, or may directly or indirectly assist, the military modernization efforts of the People's Republic of China.

(2) A discussion of the activities and operations of the Commission, including—

(A) United States funding;

(B) a listing of participating United States officials;

(C) specification of meeting dates and locations (prospective and retrospective);

(D) summary of discussions; and

(E) copies of any agreements reached.

(3) A discussion of the relationship between the "defense conversion" activities of the People's Republic of China and its defense modernization efforts.

(4) A discussion of the extent to which United States business activities pursued, or proposed to be pursued, under the imprimatur of the Commission, or the importation of western technology in general, contributes to the modernization of China's military industrial base, including any steps taken by the United States or by United States commercial entities to safeguard the technology or intellectual property rights associated with any materials or information transferred.

(5) An assessment of the benefits derived by the United States from its participation in the Commission, including whether or to what extent United States participation in the Commission has resulted or will result in the following:

(A) Increased transparency in the current and projected military budget and doctrine of the People's Republic of China.

(B) Improved behavior and cooperation by the People's Republic of China in the areas of missile and nuclear proliferation.

(C) Increased transparency in the plans of the People's Republic of China's for nuclear and missile force modernization and testing.

(6) Efforts undertaken by the Secretary of Defense to—

(A) establish a list of enterprises controlled by the People's Liberation Army, including those which have been successfully converted to produce products solely for civilian use; and

(B) provide estimates of the total revenues of those enterprises.

(7) A description of current or proposed mechanisms for improving the ability of the United States to track the flow of revenues from the enterprises specified on the list established under paragraph (6)(A).

(b) SUBMITTAL OF REPORTS.—A report shall be submitted under subsection (a) not later than August 1 of each year with respect to the first six months of that year and shall be submitted not later than February 1 of each year with respect to the last six months of the preceding year. The first report under such subsection shall be submitted not less than 60 days after the date of the enactment of this Act and shall apply with respect to the six-month period preceding the date of the enactment of this Act.

(c) FINAL REPORT UPON TERMINATION OF COMMISSION.—Upon the termination of the United States-People's Republic of China Joint Defense Conversion Commission, the Secretary of Defense shall submit a final report under this section covering the period from the end of the period covered by the last such report through the termination of the Commission, and subsection (a) shall cease to apply after the submission of such report.

h. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE XIII—MATTERS RELATING TO ALLIES AND OTHER NATIONS

Subtitle A—Matters Relating to NATO

SEC. 1301. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS WITH NATO ORGANIZATIONS.

[Omitted—Amendment]

SEC. 1302. NORTH ATLANTIC TREATY ORGANIZATION.

(a) FINDINGS.—Congress makes the following findings:

(1) The North Atlantic Treaty Organization has served as a bulwark of peace, security, and democracy for the United States and the members of the alliance since 1949.

(2) The unswerving resolve of the member states of the North Atlantic Treaty Organization to mutual defense against the threat of communist aggression was central to the demise of the Warsaw Pact.

(3) The North Atlantic Treaty Organization is the most successful international security organization in history and is well suited to help marshal cooperative political, diplomatic, economic, and humanitarian efforts, buttressed by credible military capability aimed at deterring conflict, and thus contributing to international peace and security.

(4) The threat of instability in Eastern and Central Europe, as well as in the Southern and Eastern Mediterranean, continues to pose a fundamental challenge to the interests of the member states of the North Atlantic Treaty Organization.

(5) North Atlantic Treaty Organization assets have been deployed in recent years for more than the territorial defense of alliance members, and the Rome Summit of October 1991 adopted a new strategic concept for the North Atlantic Treaty Organization that entertained the possibility of operations beyond the alliance's self-defense area.

(6) In Oslo in July 1992, and in Brussels in December 1992, the alliance embraced the deployment of North Atlantic Treaty Organization forces to peacekeeping operations under the auspices of the United Nations or the Conference on Security and Cooperation in Europe.

(7) The North Atlantic Treaty Organization should attempt to cooperate with and seek a mandate from international organizations such as the United Nations when considering responses to crises outside the alliances's self-defense area.

(8) Not all members of the international community share a commonality of interests that would ensure timely action by the United Nations Security Council.

(9) It is critical that the security interests of the member countries of the North Atlantic Treaty Organization not be held hostage to indecision at the United Nations or a veto by a permanent member of the Security Council.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) it should be the policy of the United States that, in accordance with article 53 of the United Nations Charter, the North Atlantic Treaty Organization retains the right of autonomy of action regarding missions in addition to collective defense should the United Nations Security Council or the Conference on Security and Cooperation in Europe fail to act;

(2) while it is desirable to work with other international organizations and arrangements where feasible in dealing with threats to the peace, the North Atlantic Treaty Organization is not an auxiliary to the United Nations or any other organization; and

(3) the member states of the North Atlantic Treaty Organization reserve the right to act collectively in defense of their vital interests.

SEC. 1303. AUTHORIZED END STRENGTH FOR MILITARY PERSONNEL IN EUROPE.

[Omitted—Amendment]

SEC. 1304. ALLIED SHARE OF INSTALLATIONS COSTS.

(a) GOAL FOR ALLIED CONTRIBUTIONS.—In continuing efforts to enter into revised host-nation agreements as described in section 1301(e) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2545) and section 1401(c) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1824), the President shall seek to have European member nations of NATO assume an increased share of the nonpersonnel costs for United States military installations in those nations so that (1) by September 30, 1996, those nations have assumed 37.5 percent of such costs, and (2) by September 30, 1997, those nations have assumed 42.5 percent of such costs.

(b) DEFINITIONS.—For purposes of this section:

(1) The term "nonpersonnel costs", with respect to United States military installations in European member nations of NATO, means costs for those installations other than costs paid from military personnel accounts.

(2) The term "contributions", with respect to the share of such nonpersonnel costs assumed by the European member nations of NATO, means those cash and in-kind contributions made by such nations that replace expenditures that would otherwise be made by the Secretary using funds appropriated or otherwise made available in defense appropriations Acts.

SEC. 1305. PAYMENTS-IN-KIND FOR RELEASE OF UNITED STATES OVERSEAS MILITARY FACILITIES TO NATO HOST COUNTRIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States has invested $6,500,000,000 in military infrastructure in North Atlantic Treaty Organization (NATO) countries.

(2) As part of an overall plan to reduce United States troop strength overseas, the Department of Defense plans to close, or reduce United States military presence at, 867 military sites outside the United States.

(3) Most of the military sites outside the United States announced for closure are in Europe, where the United States

has already closed 434 such sites while carrying out a reduction in troop strength in Europe from 323,432 in 1987 to approximately 100,000 by the end of fiscal year 1996.

(4) When the United States closes military sites in Europe, it leaves buildings, roads, sewers, and other real property improvements behind.

(5) Some of the European NATO allies have agreed to pay the United States for the residual value of the real property improvements left behind.

(6) Although the United States military drawdown has been rapid since 1990, European allies have been slow to pay the United States the residual value of the sites released by the United States.

(7) As of 1994, the United States has recouped only $33,300,000 in cash, most of which was recovered in 1989.

(8) Although the United States has released to Germany over 60 percent of the military sites planned for closure by the United States in that country and the current value of United States facilities to be returned to the German government is estimated at approximately $2,700,000,000, the German government has budgeted only $25,000,000 for fiscal year 1994 for payment of compensation for the United States investment in those facilities.

(b) POLICY.—It is the sense of Congress that—

(1) the President should redouble efforts to recover the value of the United States investment in the military infrastructure in NATO countries;

(2) the President should enter into negotiations with the government of each NATO host country with a presumption that payments to compensate the United States for the negotiated value of improvements will be made in cash and deposited in the Department of Defense Overseas Military Facility Investment Recovery Account;

(3) the President should enter into negotiations for payments-in-kind only as a last resort and only after informing the Congress that negotiations for cash payments have not been successful; and

(4) to the extent that in-kind contributions are received in lieu of cash payments in any fiscal year, the in-kind contributions should be used for projects that are identified priorities of the Department of Defense.

(c) REQUIREMENTS AND LIMITATIONS RELATING TO PAYMENTS-IN-KIND.—[Omitted—Amendment]

SEC. 1306. GEORGE C. MARSHALL EUROPEAN CENTER FOR SECURITY STUDIES.

(a) USE OF CONTRIBUTIONS.—Funds received by the United States Government from the Federal Republic of Germany as its fair share of the costs of the George C. Marshall European Center for Security Studies shall be credited to appropriations available to the Department of Defense for the George C. Marshall European Center for Security Studies. 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.

(b) WAIVER OF CHARGES.—(1) The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the George C. Marshall European Center for Security Studies for military officers and civilian officials of cooperation partner states of the North Atlantic Cooperation Council or the Partnership for Peace if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

(2) Costs for which reimbursement is waived pursuant to paragraph (1) shall be paid from appropriations available for the Center.

* * * * * * *

Subtitle B—Matters Relating to Several Countries

SEC. 1311. LIMITATION ON OBLIGATION OF FUNDS FOR OVERSEAS BASING ACTIVITIES.

(a) LIMITATION.—The total amount authorized to be appropriated to the Department of Defense for operation and maintenance and for military construction (including construction and improvement of military family housing) that is obligated to conduct overseas basing activities during fiscal year 1995 may not exceed $8,181,000,000, except to the extent provided by the Secretary of Defense under subsection (b).

(b) EXCEPTION.—The Secretary of Defense may increase the amount of the limitation under subsection (a) by such amount as the Secretary determines to be necessary in the national interest, except that such increase may not exceed $400,000,000. The Secretary may not make any such increase until the Secretary notifies the Congress of the Secretary's intent to make such an increase and a period of 15 days elapses after the day on which the notification is received by the Congress.

(c) ALLOCATIONS OF SAVINGS.—Any amounts appropriated to the Department of Defense for fiscal year 1995 for the purposes covered by subsection (a) that are not available to be used for those purposes by reason of the limitation in that subsection shall be allocated by the Secretary of Defense for operation and maintenance and for military construction activities of the Department of Defense at military installations and facilities located inside the United States.

(d) DEFINITION.—In this section, the term "overseas basing activities" has the meaning given such term in section 1401(d)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1825), except that such term does not include activities of the Department of Defense for which funds are provided through appropriations for Military Personnel.

SEC. 1312. CLARIFICATION AND CODIFICATION OF OVERSEAS MILITARY END STRENGTH LIMITATION.

[Omitted—Amendment]

SEC. 1313. [22 U.S.C. 1928 note] COST-SHARING POLICY AND REPORT.

(a) POLICY.—It is the policy of the United States that the North Atlantic Treaty Organization (NATO) allies should assist the United States in paying the incremental costs incurred by the

United States for maintaining members of the Armed Forces in assignments to permanent duty ashore in European member nations of NATO solely for support of NATO roles and missions.

(b) IMPLEMENTATION.—The President shall take all necessary actions to ensure the effective implementation of the policy set forth in subsection (a).

(c) REPORT.—The Secretary of Defense shall include in the annual report required by section 1002(d) of the Department of Defense Authorization Act, 1985 (22 U.S.C. 1928 note) the following:

(1) A description of the United States military forces assigned to permanent duty ashore in European member nations of NATO and an analysis of the cost of providing and maintaining such forces in such assignment primarily for support of NATO roles and missions.

(2) A description of the United States military forces assigned to permanent duty ashore in European member nations of NATO primarily in support of other United States interests in other regions of the world and an analysis of the cost of providing and maintaining such forces in such assignment primarily for that purpose.

(3) A specific enumeration and description of the offsets to United States costs of providing and maintaining United States military forces in Europe that the United States received from other NATO member nations in the fiscal year covered by the report, set out by country and by type of assistance, including both in-kind assistance and direct cash reimbursement, and the projected offsets for the five fiscal years following the fiscal year covered by the report.

(d) INCREMENTAL COSTS DEFINED.—For purposes of subsection (a), the definition provided for the term "incremental costs" in section 1046 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, as added by subsection (e), shall apply with respect to maintaining members of the Armed Forces in assignments to permanent duty ashore in European member nations of NATO in the same manner as such term applies with respect to permanent stationing ashore of United States forces in foreign nations for purposes of subsection (e)(4) of such section 1046.

(e) DEFINITION FOR REPORTING REQUIREMENT.—[Omitted—Amendment]

* * * * * * *

---

i. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE XIV—MATTERS RELATING TO ALLIES AND OTHER NATIONS

Subtitle A—Defense Burden Sharing

SEC. 1401. DEFENSE BURDENS AND RESPONSIBILITIES.

(a) FINDINGS.—Congress makes the following findings:

(1) Since fiscal year 1985, the budget of the Department of Defense has declined by 34 percent in constant fiscal year 1985 dollars.

(2) During the past few years, the United States military presence overseas has declined significantly in the following ways:

(A) Since fiscal year 1986, the number of United States military personnel permanently stationed overseas has declined by almost 200,000.

(B) From fiscal year 1989 to fiscal year 1994, spending by the United States to support the stationing of United States military forces overseas will have declined by 36 percent.

(C) Since January 1990, the Department of Defense has announced the closure, reduction, or transfer to standby status of 840 United States military facilities overseas, which is approximately a 50 percent reduction in the number of such facilities.

(3) The United States military presence overseas will continue to decline as a result of actions by the executive branch and as a result of the following provisions of law:

(A) Section 1302 of the National Defense Authorization Act for Fiscal Year 1993, which requires a 40 percent reduction by September 30, 1996, in the number of United States military personnel permanently stationed ashore in overseas locations.

(B) Section 1303 of the National Defense Authorization Act for Fiscal Year 1993, which provides that no more than 100,000 United States military personnel may be permanently stationed ashore in NATO member countries after September 30, 1996.

(C) Section 1301 of the National Defense Authorization Act for Fiscal Year 1993, which reduced the spending proposed by the Department of Defense for overseas basing activities during fiscal year 1993 by $500,000,000.

(D) Sections 913 and 915 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, which directed the President to develop a plan to gradually reduce the United States military force structure in East Asia.

(4) The East Asia Strategy Initiative, which was developed in response to sections 913 and 915 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, has resulted in the withdrawal of 12,000 United States military personnel from Japan and the Republic of Korea since fiscal year 1990.

(5) In response to actions by the executive branch and the Congress, allied countries in which United States military personnel are stationed and alliances in which the United States participates have agreed to reduce the costs incurred by the United States in basing military forces overseas in the following ways:

(A) Under the 1991 Special Measures Agreement between Japan and the United States, Japan will pay by

1995 almost all yen-denominated costs of stationing United States military personnel in Japan.

(B) The Republic of Korea has agreed to pay by 1995 one-third of the won-based costs incurred by the United States in stationing United States military personnel in the Republic of Korea.

(C) The North Atlantic Treaty Organization (NATO) has agreed that the NATO Infrastructure Program will adapt to support post-Cold War strategy and could pay the annual operation and maintenance costs of facilities in Europe and the United States that would support the reinforcement of Europe by United States military forces and the participation of United States military forces in peacekeeping and conflict prevention operations.

(D) Such allied countries and alliances have agreed to share more fully the responsibilities and burdens of providing for mutual security and stability through steps such as the following:

(i) The Republic of Korea has assumed the leadership role regarding ground combat forces for the defense of the Republic of Korea.

(ii) NATO has adopted the new mission of conducting peacekeeping operations and is, for example, providing land, sea, and air forces for United Nations efforts in the former Yugoslavia.

(iii) The countries of western Europe are contributing substantially to the development of democracy, stability, and open market societies in eastern Europe and the former Soviet Union.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the forward presence of United States military personnel stationed overseas continues to be important to United States security interests;

(2) that forward presence facilitates efforts to pursue United States security interests on a collective basis rather than pursuing them on a far more costly unilateral basis or receding into isolationism;

(3) the bilateral and multilateral arrangements and alliances in which that forward presence plays a part must be further adapted to the security environment of the post-Cold War period;

(4) the cost-sharing percentages for the NATO Infrastructure Program should be reviewed with the aim of reflecting current economic, political, and military realities and thus reducing the United States cost-sharing percentage; and

(5) the amounts obligated to conduct United States overseas basing activities should decline significantly in fiscal year 1994 and in future fiscal years as—

(A) the number of United States military personnel stationed overseas continues to decline; and

(B) the countries in which United States military personnel are stationed and the alliances in which the United States participates assume an increased share of United States overseas basing costs.

(c) REDUCING UNITED STATES OVERSEAS BASING COSTS.—(1) In order to achieve additional savings in overseas basing costs, the President should—

(A) continue with the reductions in United States military presence overseas as required by sections 1302 and 1303 of the National Defense Authorization Act for Fiscal Year 1993; and

(B) intensify efforts to negotiate a more favorable host-nation agreement with each foreign country to which this paragraph applies under paragraph (3)(A).

(2) For purposes of paragraph (1)(B), a more favorable host-nation agreement is an agreement under which such foreign country—

(A) assumes an increased share of the costs of United States military installations in that country, including the costs of—

(i) labor, utilities, and services;

(ii) military construction projects and real property maintenance;

(iii) leasing requirements associated with the United States military presence; and

(iv) actions necessary to meet local environmental standards;

(B) relieves the United States of all tax liability that, with respect to forces located in that country, is incurred by the Armed Forces of the United States under the laws of that country and the laws of the community where those forces are located; and

(C) ensures that goods and services furnished in that country to the Armed Forces of the United States are provided at minimum cost and without imposition of user fees.

(3)(A) Except as provided in subparagraph (B), paragraph (1)(B) applies with respect to—

(i) each country of the North Atlantic Treaty Organization (other than the United States); and

(ii) each other foreign country with which the United States has a bilateral or multilateral defense agreement that provides for the assignment of combat units of the Armed Forces of the United States to permanent duty in that country or the placement of combat equipment of the United States in that country.

(B) Paragraph (1) does not apply with respect to—

(i) a foreign country that receives assistance under section 23 of the Arms Export Control Act (22 U.S.C. 2763) (relating to the foreign military financing program) or under the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.); or

(ii) a foreign country that has agreed to assume, not later than September 30, 1996, at least 75 percent of the nonpersonnel costs of United States military installations in the country.

(d) OBLIGATIONAL LIMITATION.—(1) The total amount appropriated to the Department of Defense for Military Personnel, for Operation and Maintenance, and for military construction (including construction and improvement of military family housing) that

is obligated to conduct overseas basing activities during fiscal year 1994 may not exceed $16,915,400,000 (such amount being the amount appropriated for such purposes for fiscal year 1993 reduced by $3,300,000,000), except to the extent provided by the Secretary of Defense under paragraph (3).

(2) For purposes of this subsection, the term "overseas basing activities" means the activities of the Department of Defense for which funds are provided through appropriations for Military Personnel, for Operation and Maintenance (including appropriations for family housing operations), and for military construction (including construction and improvement of military family housing) for the payment of costs for Department of Defense overseas military units and the costs for all dependents who accompany Department of Defense personnel outside the United States.

(3) The Secretary of Defense may increase the amount of the limitation under paragraph (1) by such amount or amounts as the Secretary determines to be necessary in the national interest, but not to exceed a total increase of $582,700,000. The Secretary may not increase the amount of such limitation under the preceding sentence until the Secretary provides notice to Congress of the Secretary's intent to authorize such an increase and a period of 15 days elapses after the day on which such notice is provided.

(e) ALLOCATIONS OF SAVINGS.—Any amounts appropriated to the Department of Defense for fiscal year 1994 for the purposes covered by subsection (d)(1) that are not available to be used for those purposes by reason of the limitation in that subsection shall be allocated by the Secretary of Defense for operation and maintenance and for military construction activities of the Department of Defense at military installations and facilities located inside the United States.

* * * * * * *

Subtitle D—Other Matters

* * * * * * *

SEC. 1432. AMERICAN DIPLOMATIC FACILITIES IN GERMANY.

(a) LIMITATION ON SOURCE OF FUNDS FOR NEW UNITED STATES DIPLOMATIC FACILITIES.—(1) As of January 1, 1995, the United States may not purchase, construct, lease, or otherwise occupy any facility as an embassy, chancery, or consular facility in Germany unless that facility is purchased, constructed, modified, or leased with funds provided by the Government of Germany as an offset for the value of facilities returned by the United States Government to the Government of Germany pursuant to Article 52 of the Status-of-Forces Agreement with the Government of Germany in effect on the date of the enactment of this Act.

(2) The limitation in paragraph (1) does not apply with respect to any facility occupied as of January 1, 1995, by United States diplomatic personnel.

(b) CERTIFICATION.—As of January 1, 1995, the Secretary of State (and any representative of the Secretary of State) may not enter into any legal instrument to purchase, construct, modify, or lease any facility described in subsection (a) until the Secretary of Defense certifies to the appropriate committees of Congress that

the United States has received (or is scheduled to receive) cash payments or offsets-in-kind of a value not less than 50 percent of the value of the facilities returned by the United States Government to the Government of Germany pursuant to Article 52 of the Status-of-Forces Agreement with the Government of Germany in effect on the date of the enactment of this Act.

(c) DEFINITION.—For purposes of this section, the term "appropriate committees of Congress" means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

* * * * * * *

SEC. 1434. SEMIANNUAL REPORT ON EFFORTS TO SEEK COMPENSATION FROM GOVERNMENT OF PERU FOR DEATH AND WOUNDING OF CERTAIN UNITED STATES SERVICEMEN.

(a) FINDINGS.—The Congress finds that—

(1) the United States Government has not made adequate efforts to seek the payment of compensation by the Government of Peru for the death and injuries to United States military personnel resulting from the attack by aircraft of the military forces of Peru on April 24, 1992, against a United States Air Force C–130 aircraft operating off the coast of Peru; and

(2) in failing to make such efforts adequately, the United States Government has failed in its obligation to support the servicemen and their families involved in the incident and generally to support members of the Armed Forces carrying out missions on behalf of the United States.

(b) SEMIANNUAL REPORT.—Not later than December 1 and June 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and Foreign Affairs of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate a report on the efforts made by the Government of the United States during the preceding six-month period to seek the payment of fair and equitable compensation by the Government of Peru (1) to the survivors of Master Sergeant Joseph Beard, Jr., United States Air Force, who was killed in the attack described in subsection (a), and (2) to the other crew members who were wounded in the attack and survived.

(c) TERMINATION OF REPORT REQUIREMENT.—The requirement in subsection (b) shall terminate upon certification by the Secretary of Defense to Congress that the Government of Peru has paid fair and equitable compensation as described in subsection (b).

j. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE XIII—MATTERS RELATING TO ALLIES AND OTHER NATIONS

Subtitle A—Burdensharing

SEC. 1301. OVERSEAS BASING ACTIVITIES.

(a) FUNDING REDUCTIONS.—(1)(A) The total amount appropriated to the Department of Defense for operation and maintenance and for military construction (including NATO Infrastructure) that is obligated to conduct overseas basing activities during fiscal year 1993 may not exceed the amount equal to the baseline for fiscal year 1993 reduced by $500,000,000.

(B) For purposes of subparagraph (A), the baseline for fiscal year 1993 is the sum of the amounts of the overseas funding estimates specified for such year for Operation and Maintenance; Family Housing, Operations; Family Housing, Construction; and Military Construction (including NATO Infrastructure) set forth on page 8 of the report of the Department of Defense dated January 1992, and entitled "Amended FY 1992/FY 1993 Biennial Budget Estimates for Defense Overseas Funding and Dependent Overseas Funding".

(2) It is the sense of Congress that the amounts obligated to conduct overseas basing activities should decline significantly in fiscal years 1994, 1995, and 1996 as—

(A) the number of United States military personnel stationed overseas is reduced in conformance with the provisions of section 1302 and the amendment made by section 1303; and

(B) the countries to which subsection (e)(1) and (e)(2) apply assume an increased share of the costs of United States military installations in those countries.

(b) DEFINITION.—In this section, the term "overseas basing activities" means the activities of the Department of Defense for which funds are provided through appropriations for operation and maintenance, including appropriations for family housing operations, and for military construction (including family housing construction and NATO Infrastructure) for the payment of costs for Department of Defense overseas military units and the costs for all dependents who accompany Department of Defense personnel outside the United States.

(c) OFFSETS.—Reductions for purposes of subsection (a) in obligations of appropriated funds for overseas basing activities may be offset by either or a combination of the following:

(1) Increase in the level of host-nation support due to agreements reached under subsection (e) or otherwise.

(2) Accelerated withdrawal of United States forces or equipment under the provisions of section 1302 and the amendment made by section 1303.

(d) ALLOCATIONS OF SAVINGS.—The savings realized as a result of the reductions for purposes of subsection (a) will be allocated for operation and maintenance and military construction activities of

the Department of Defense at military installations and facilities located inside the United States.

(e) DEFENSE BURDENSHARING AGREEMENTS FOR INCREASED HOST NATION SUPPORT.—(1) In order to achieve additional savings in fiscal year 1994 and in future fiscal years, the President should enter into a revised host-nation agreement with each foreign country described in paragraph (3)(A).

(2) For purposes of paragraph (1), a revised host-nation agreement is an agreement under which such foreign country, on or before September 30, 1994—

(A) assumes an increased share of the costs of United States military installations in that country, including the costs of—

(i) labor, utilities, and services;

(ii) military construction projects and real property maintenance;

(iii) leasing requirements associated with United States military presence; and

(iv) actions necessary to meet local environmental standards;

(B) relieves the Armed Forces of the United States of all tax liability that, with respect to forces located in such country, is incurred by the Armed Forces under the laws of that country and the laws of the community where those forces are located; and

(C) ensures that goods and services furnished in that country to the Armed Forces of the United States are provided at minimum cost and without imposition of user fees.

(3)(A) Except as provided in subparagraph (B), paragraph (1) applies with respect to—

(i) each country of the North Atlantic Treaty Organization (other than the United States); and

(ii) each other foreign country with which the United States has a bilateral or multilateral defense agreement that provides for the assignment of combat units of the Armed Forces of the United States to permanent duty in that country or the placement of combat equipment of the United States in that country.

(B) Paragraph (1) does not apply with respect to—

(i) a foreign country that receives assistance under section 23 of the Arms Export Control Act (22 U.S.C. 2673) (relating to the foreign military financing program) or under the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.); or

(ii) a foreign country that has agreed to assume, not later than September 30, 1996, at least 75 percent of the non-personnel costs of United States military installations in that country.

[Sections 1302 and 1303 were repealed by sections 1312(c) and 1303(c), respectively, of Public Law 103–337.]

SEC. 1304. [10 U.S.C. 113 note] REPORTS ON OVERSEAS BASING.

(a) ANNUAL REPORT.—The Secretary of Defense shall, not later than March 31 of each year through 1997, submit to the Committee

on Armed Services of the Senate and the Committee on National Security of the House of Representatives, either separately or as part of another relevant report, a report that specifies—

(1) the stationing and basing plan by installation for United States military forces outside the United States;

(2) the status of closures of United States military installations located outside the United States;

(3) both—

(A) the status of negotiations, if any, between the United States and the host government as to (i) United States claims for compensation for the fair market value of the improvements made by the United States at each installation referred to in paragraph (2), and (ii) any claims of the host government for damages or restoration of the installation; and

(B) the representative of the United States in any such negotiations;

(4) the potential savings to the United States resulting from such closures;

(5) the cost to the United States of any improvements made at each installation referred to in paragraph (2) and the fair market value of such improvements, expressed in constant dollars based on the date of completion of the improvements;

(6) in each case in which negotiations between the United States and a host government have resulted in an agreement for the payment to the United States by the host government of the value of improvements to an installation made by the United States, the amount of such payment, the form of such payment, and the expected date of such payment; and

(7) efforts and progress toward achieving host nation offsets under section 1301(e) and reduced end strength levels under section 1302.

(b) REPORT ON BUDGET IMPLICATIONS OF OVERSEAS BASING AGREEMENTS.—Whenever the Secretary of Defense enters into a basing agreement between the United States and a foreign country with respect to United States military forces outside the United States, the Secretary of Defense shall, in advance of the signing of the agreement, submit to the congressional defense committees a report on the Federal budget implications of the agreement.

---

k. National Defense Authorization Act For Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE X—GENERAL PROVISIONS

* * * * * * *

PART D—MATTERS RELATED TO ALLIES AND OTHER NATIONS

* * * * * * *

SEC. 1045. BURDENSHARING CONTRIBUTIONS BY JAPAN, KUWAIT, AND THE REPUBLIC OF KOREA.

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—During fiscal years 1992 and 1993, the Secretary of Defense may accept cash contributions from Japan, Kuwait, and the Republic of Korea for the purposes specified in subsection (c).

(b) CREDIT TO APPROPRIATIONS.—Contributions accepted in a fiscal year under subsection (a) shall be credited to appropriations of the Department of Defense that are available for that fiscal year for the purposes for which the contributions are made. The contributions so credited shall be—

(1) merged with the appropriations to which they are credited; and

(2) available for the same time period as those appropriations.

(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 credited under subsection (b) to an appropriation account of the Department of Defense 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 a report to the congressional defense committees 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.

(f) REPORTS.—Not later than 30 days after the end of each quarter of fiscal years 1992 and 1993, the Secretary of Defense shall submit to the congressional defense committees a report specifying separately for Japan, Kuwait, and the Republic of Korea—

(1) the amount of the contributions accepted by the Secretary during the preceding quarter 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 quarter and the purposes for which the contributions were expended.

SEC. 1046. [22 U.S.C. 1928 note] DEFENSE COST-SHARING.

(a) DEFENSE COST-SHARING AGREEMENTS.—(1) The President shall consult with the foreign nations described in paragraph (2) to seek to achieve, within 12 months after the date of the enactment of this Act, an agreement on equitable defense cost-sharing with each such nation.

(2) The foreign nations referred to in paragraph (1) are—

(A) each member nation of the North Atlantic Treaty Organization (other than the United States); and

(B) every other foreign nation with which the United States has a bilateral or multilateral defense agreement that provides for the assignment of combat units of the Armed Forces of the United States to permanent duty in the nation or the placement of combat equipment of the United States in the nation.

(3) Each defense cost-sharing agreement entered into under paragraph (1) should provide that the foreign nation agrees to share equitably with the United States, through cash compensation or in-kind contributions, or a combination thereof, the costs to the United States that arise solely from the implementation of the provisions of the bilateral or multilateral defense agreement with that nation.

(b) EXCEPTION.—The provisions of subsection (a) shall not apply to those foreign nations that receive assistance under section 23 of the Arms Export Control Act (22 U.S.C. 2763) relating to the foreign military financing program or under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.) relating to the Economic Support Fund.

(c) CONSULTATIONS.—In conducting the consultations required under subsection (a), the President should make maximum feasible use of the Department of Defense and the post of Ambassador-at-Large created by section 8125(c) of the Department of Defense Appropriations Act, 1989 (10 U.S.C. 113 note).

(d) ALLIES MUTUAL DEFENSE PAYMENTS ACCOUNT.—The Secretary of Defense shall maintain an accounting for defense cost-sharing under each agreement entered into with a foreign nation pursuant to subsection (a). The accounting shall show for each foreign nation the amount and nature of the—

(1) cost-sharing contributions agreed to by the nation;

(2) cost-sharing contributions delivered by the nation;

(3) additional contributions by the nation to any commonly funded multilateral programs providing for United States participation in the common defense;

(4) contributions by the United States to any such commonly funded multilateral programs;

(5) contributions of all other nations to any such commonly funded multilateral programs; and

(6) costs to the United States that arise solely from the implementation of the provisions of the bilateral or multilateral defense agreement with the nation.

(e) REPORTING REQUIREMENTS.—The Secretary of Defense shall include in each Report on Allied Contributions to the Common Defense prepared under section 1003 of Public Law 98–525 (22 U.S.C. 1928 note) information, in classified and unclassified form—

(1) describing the efforts undertaken and the progress made by the President in carrying out subsections (a) and (c) during the period covered by the report;

(2) specifying the accounting of defense cost-sharing contributions maintained under subsection (d) during that period;

(3) assessing how equitably foreign nations not described in subsection (a) or excepted under subsection (b) are sharing the costs and burdens of implementing defense agreements with the United States and how those defense agreements serve the national security interests of the United States; and

(4) specifying the incremental costs to the United States associated with the permanent stationing ashore of United States forces in foreign nations.

(f) INCREMENTAL COSTS DEFINED.—In this section, the term "incremental costs", with respect to permanent stationing ashore of United States forces in foreign nations, means the difference between the costs associated with maintaining United States military forces in assignments to permanent duty ashore in the foreign nations and the costs associated with maintaining those same military forces at military bases in the United States.

---

l. Department of Defense Appropriations Act, 1991

(Public Law 101–511, approved Nov. 5, 1990)

SEC. 8105. CONTRIBUTIONS BY JAPAN TO THE SUPPORT OF UNITED STATES FORCES IN JAPAN.—

(a) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—After September 30, 1990, funds appropriated pursuant to an appropriation contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

(b) ANNUAL REDUCTION IN CEILING UNLESS SUPPORT FURNISHED.—Unless the President certifies to Congress before the end of each fiscal year that Japan has agreed to offset for that fiscal year the direct costs incurred by the United States related to the presence of all United States military personnel in Japan, excluding the military personnel title costs, the end strength level for that fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year.

(c) SENSE OF CONGRESS.—It is the sense of Congress that all those countries that share the benefits of international security and stability should share in the responsibility for that stability and security commensurate with their national capabilities. The Congress also recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq. The Congress also recognizes that Japan has a greater economic capability to contribute to inter-

national security and stability than any other member of the international community and wishes to encourage Japan to contribute commensurate with that capability.

(d) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

(2) The President may waive the limitation in this section for any fiscal year if he declares that it is in the national interest to do so and immeditely informs Congress of the waiver and the reasons for the waiver.

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

---

m. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE XIV—GENERAL PROVISIONS

* * * * * * *

PART E—MATTERS RELATING TO ALLIES AND OTHER NATIONS

* * * * * * *

SEC. 1455. PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN AND CONTRIBUTIONS BY JAPAN TO THE SUPPORT OF UNITED STATES FORCES IN JAPAN

(a) PURPOSE.—It is the purpose of this section to require Japan to offset the direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of United States military personnel in Japan.

(b) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—Funds appropriated pursuant to an authorization contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

(c) SENSE OF CONGRESS ON ALLIED BURDEN SHARING.—(1) Congress recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq.

(2) It is the sense of Congress that—

(A) all countries that share the benefits of international security and stability should, commensurate with their national capabilities, share in the responsibility for maintaining that security and stability; and

(B) given the economic capability of Japan to contribute to international security and stability, Japan should make contributions commensurate with that capability.

(d) NEGOTIATIONS.—At the earliest possible date after the date of the enactment of this Act, the President shall enter into negotiations with Japan for the purpose of achieving an agreement before September 30, 1991, under which Japan offsets all direct costs (other than pay and allowances for United States military and ci-

vilian personnel) incurred by the United States related to the presence of all United States military personnel stationed in Japan.

(e) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

(2) This section may be waived by the President if the President—

(A) declares an emergency or determines that such a waiver is required by the national security interests of the United States; and

(B) immediately informs the Congress of the waiver and the reasons for the waiver.

* * * * * * *

SEC. 1457. [50 U.S.C. 404c] ANNUAL REPORT ON UNITED STATES SECURITY ARRANGEMENTS AND COMMITMENTS WITH OTHER NATIONS

(a) REPORT REQUIREMENTS.—The President shall submit to the congressional committees specified in subsection (d) each year a report (in both classified and unclassified form) on United States security arrangements with, and commitments to, other nations.

(b) MATTERS TO BE INCLUDED.—The President shall include in each such report the following:

(1) A description of—

(A) each security arrangement with, or commitment to, other nations, whether based upon (i) a formal document (including a mutual defense treaty, a pre-positioning arrangement or agreement, or an access agreement), or (ii) an expressed policy; and

(B) the historical origins of each such arrangement or commitment.

(2) An evaluation of the ability of the United States to meet its commitments based on the projected reductions in the defense structure of the United States.

(3) A plan for meeting each of those commitments with the force structure projected for the future.

(4) An assessment of the need to continue, modify, or discontinue each of those arrangements and commitments in view of the changing international security situation.

(c) DEADLINE FOR REPORT.—The President shall submit the report required by subsection (a) not later than February 1 of each year.

(d) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) 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.

SEC. 1458. ECONOMIC SANCTIONS AGAINST THE REPUBLIC OF IRAQ

If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importa-

tion into the United States of any or all products of any foreign country that has not—

(1) prohibited—

(A) the importation of products of Iraq into its customs territory, and

(B) the export of its products to Iraq; or

(2) given assurances satisfactory to the President that such import and export sanctions will be promptly implemented.

---

n. National Defense Authorization Act for Fiscal Years 1990 and 1991

(Public Law 101–189, approved Nov. 20, 1989)

TITLE IX—MATTERS RELATING TO NATO MEMBER NATIONS AND OTHER ALLIES

* * * * * * *

PART D—COOPERATIVE AGREEMENTS

* * * * * * *

SEC. 935. [22 U.S.C. 2347c note] AUTHORITY FOR EXCHANGE TRAINING THROUGH SPECIFIED PROFESSIONAL MILITARY EDUCATION INSTITUTION OUTSIDE THE UNITED STATES

(a) AUTHORITY.—The United States Army Russian Institute [1] in Garmisch-Partenkirchen, Federal Republic of Germany, shall be treated for purposes of section 544 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347c) as if it were located in the United States.

(b) EXPIRATION OF AUTHORITY.—Subsection (a) shall cease to be in effect upon the enactment in foreign assistance authorizing legislation of an amendment to section 544 of the Foreign Assistance Act of 1961 that provides the same authority as is provided by subsection (a).

---

o. Department of Defense Appropriations Act, 1989

(Public Law 100–463, approved Oct. 1, 1988)

SEC. 8125. [10 U.S.C. 113 note] (a) * * *

* * * * * * *

(c) The President shall appoint an Ambassador at Large responsible to the President who shall have the responsibility for ensuring a more balanced sharing of defense costs by the NATO members, Japan, the Republic of Korea, and other countries allied to the United States. Such responsibilities shall include negotiations for burdensharing, including increased in-kind and financial support by such countries for Department of Defense military units and personnel assigned to permanent duty ashore outside the United States in support of the security of such countries, and multi-lateral foreign assistance costs. The Ambassador at Large should review (1) trade restrictions that require German utilities to

[1] The United States Army Russian Institute is now known as the George C. Marshall European Center for Security Studies. See section 923 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1863).

purchase German-produced coal to the exclusion of foreign coal, including United States coal, and (2) the extent to which the tax on electricity used to subsidize German coal producers is borne by American military installations, American military dependents, or American civilians who support our military installations. The Ambassador at Large should prepare an economic analysis on the comparison of using German versus United States coal at defense facilities in Europe. This analysis should address the issues of all direct subsidies provided on German coal and restrictions imposed on imported coal and should be submitted to the Secretaries of Defense, State, and Commerce for use in their study on the economic benefits of using coal at defense facilities in Europe.

(d) The President shall specify (separately by appropriation account) in the Department of Defense items included in each budget submitted to Congress under section 1105 of title 31, United States Code, (1) the amounts necessary for payment of all personnel, operations, maintenance, facilities, and support costs for Department of Defense overseas military units, and (2) the costs for all dependents who accompany Department of Defense personnel outside the United States.

(e) * * *

(f) As of September 30 of each fiscal year, the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea may not exceed 94,450 (the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea on September 30, 1987). The limitation in the preceding sentence may be increased if and when (1) a major reduction of United States forces in the Republic of the Philippines is required because of a loss of basing rights in that nation, and (2) the President determines and certifies to Congress that, as a consequence of such loss, an increase in United States forces stationed in Japan and the Republic of Korea is necessary.

(g)(1) After fiscal year 1990, budget submissions to Congress under section 1105 of title 31, United States Code, shall identify funds requested for Department of Defense personnel and units in permanent duty stations ashore outside the United States that exceed the amount of such costs incurred in fiscal year 1989 and shall set forth a detailed description of (A) the types of expenditures increased, by appropriation account, activity and program; and (B) specific efforts to obtain allied host nations' financing for these cost increases.

(2) The Secretary of Defense shall notify in advance the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives through existing notification procedures, when costs of maintaining Department of Defense personnel and units in permanent duty stations ashore outside the United States will exceed the amounts as defined in the Department of Defense budget as enacted for that fiscal year. Such notification shall describe: (A) the type of expenditures that increased; and (B) the source of funds (including prior year unobligated balances) by appropriation account, activity and program, proposed to finance these costs.

(3) In computing the costs incurred for maintaining Department of Defense personnel and forces in permanent duty stations ashore outside the United States compared with the amount of such costs incurred in fiscal year 1989, the Secretary shall—

(A) exclude increased costs resulting from increases in the rates of pay provided for members of the Armed Forces and civilian employees of the United States Government and exclude any cost increases in supplies and services resulting from inflation; and

(B) include (i) the costs of operations and maintenance and of facilities for the support of Department of Defense overseas personnel, and (ii) increased costs resulting from any decline in the foreign exchange rate of the United States dollar.

(h) The provisions of subsections (f) and (g) shall not apply in time of war or during a national emergency declared by the President or Congress.

(i) In this section—

(1) the term "personnel" means members of the Armed Forces of the United States and civilian employees of the Department of Defense;

(2) the term "Department of Defense overseas personnel" means those Department of Defense personnel who are assigned to permanent duty ashore outside the United States; and

(3) the term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

---

p. Department of Defense Authorization Act, 1985

(Public Law 98–525; approved Oct. 19, 1984)

[Permanent Ceiling on Number of Military Personnel Assigned to Ashore Duty in European Member Nations of NATO]

TITLE X—MATTERS RELATING TO NATO AND OTHER ALLIES

IMPROVEMENTS TO NATO CONVENTIONAL CAPABILITY

SEC. 1002. [22 U.S.C. 1928 note] (a) * * *

* * * * * * *

(c)(1) The end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of the North Atlantic Treaty Organization may not exceed a permanent ceiling of approximately 100,000 in any fiscal year.

(2) If the Secretary of Defense certifies to the Congress in writing during any fiscal year after fiscal year 1985 that during the previous fiscal year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity consistent with the goals set forth in subsection (b) which contributes to lengthening the time

period between an armed attack on any NATO country and the time the Supreme Allied Commander, Europe, would have to request the release and use of nuclear weapons, the Congress would give strong consideration to authorizing an increase in the permanent ceiling prescribed in paragraph (1) for fiscal years after such fiscal year.

(3) For purposes of this subsection, the following members of the Armed Forces are excluded in calculating the end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO:

(A) Members assigned to permanent duty ashore in Iceland, Greenland, and the Azores.

(B) Members performing duties in Europe for more than 179 days under a military-to-military contact program under section 168 of title 10, United States Code.

* * * * * * *

(f)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

REPORT ON ALLIED CONTRIBUTIONS TO THE COMMON DEFENSE

SEC. 1003. [22 U.S.C. 1928 note] (a) In recognition of the increasing military threat faced by the Western World and in view of the growth, relative to the United States, in the economic strength of Japan, Canada, and a number of Western European countries which has occurred since the signing of the North Atlantic Treaty on April 4, 1949, and the Mutual Cooperation and Security Treaty between Japan and the United States on January 19, 1960, it is the sense of the Congress that—

(1) the burdens of mutual defense now assumed by some of the countries allied with the United States under those agreements are not commensurate with their economic resources;

(2) since May 1978, when each member nation of the North Atlantic Treaty Organization (NATO) agreed to increase real defense spending annually in the range of 3 percent, most NATO members, except for the United States, have failed to meet the 3 percent real growth commitment consistently;

(3) since May 1981, when the Government of Japan established its policy to defend the air and sea lines of communication out to 1,000 nautical miles from the coast of Japan, progress to develop the necessary self-defense capabilities to fulfill that pledge has been extremely disappointing;

(4) Japan is the ally of the United States with the greatest potential for improving its self-defense capabilities and should, therefore, rapidly increase its annual defense spending to the levels required to fulfill that pledge and to enable Japan to be capable of an effective conventional self-defense capability by 1990, including the capability to carry out its 1,000-mile defense policy, a development that would be consonant not only

with Japan's current prominent position in the family of nations but also with its unique sensibilities on the issues of war and peace, sensibilities that are recognized and respected by the people of the United States; and

(5) the continued unwillingness of such countries to increase their contributions to the common defense to more appropriate levels will endanger the vitality, effectiveness, and cohesion of the alliances between those countries and the United States.

(b) It is further the sense of the Congress that the President should seek from each signatory country (other than the United States) of the two treaties referred to in subsection (a) acceptance of international security responsibilities and an agreement to make contributions to the common defense which are commensurate with the economic resources of such country, including, when appropriate, an increase in host nation support.

(c) The Secretary of Defense shall submit to the Congress each year[1] , not later than April 1, a classified report containing—

(1) a comparison of the fair and equitable shares of the mutual defense burdens of these alliances that should be borne by the United States, by other member nations of NATO, and by Japan, based upon economic strength and other relevant factors, and the actual defense efforts of each nation together with an explanation of disparities that currently exist and their impact on mutual defense efforts;

(2) a description of efforts by the United States and the efforts of other members of the alliances to eliminate any existing disparities;

(3) projected estimates of the real growth in defense spending for the fiscal year in which the report is submitted for each NATO member nation;

(4) a description of the defense-related initiatives undertaken by each NATO member nation within the real growth in defense spending of such nation in the fiscal year immediately preceding the fiscal year in which the report is submitted;

(5) an explanation of those instances in which the commitments to real growth in defense spending have not been realized and a description of efforts being made by the United States to ensure fulfillment of these important NATO commitments;

(6) a description of the activities of each NATO member and Japan to enhance the security and stability of the Southwest Asia region and to assume additional missions for their own defense as the United States allocates additional resources to the mission of protecting Western interests in world areas not covered by the system of Western Alliances; and

(7) a description of what additional actions the executive branch plans to take should the efforts by the United States referred to in clauses (2) and (5) fail, and, in those instances where such additional actions do not include consideration of

[1] Section 1084(e) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) states that "Section 1003(c) of Public Law 98–515 is amended by striking out 'each year' and inserting 'by March 1, 1998, and every other year thereafter' ". The Public Law referred to should be Public Law 98–525 so that the amendment would be executed to this section.

the repositioning of American troops, a detailed explanation as to why such repositioning is not being so considered.

(d) The Secretary of Defense shall also submit to the Congress not more than 30 days after the submission of the report required under subsection (a) an unclassified report containing the matters set forth in clauses (1) through (7) of such subsection.

---

q. Assignment of Military Personnel for Overseas Management of Foreign Assistance Programs

(Section 515 of Foreign Assistance Act of 1961)

SEC. 515. [22 U.S.C. 2321i] OVERSEAS MANAGEMENT OF ASSISTANCE AND SALES PROGRAMS.—(a) In order to carry out his responsibilities for the management of international security assistance programs conducted under this chapter, chapter 5 of this part, and the Arms Export Control Act, the President may assign members of the Armed Forces of the United States to a foreign country to perform one or more of the following functions:

(1) equipment and services case management;

(2) training management;

(3) program monitoring;

(4) evaluation and planning of the host government's military capabilities and requirements;

(5) administrative support;

(6) promoting rationalization, standardization, interoperability, and other defense cooperation measures; and

(7) liaison functions exclusive of advisory and training assistance.

(b) Advisory and training assistance conducted by military personnel assigned under this section shall be kept to an absolute minimum. It is the sense of the Congress that advising and training assistance in countries to which military personnel are assigned under this section shall be provided primarily by other personnel who are not assigned under this section and who are detailed for limited periods to perform specific tasks.

(c)(1) The number of members of the Armed Forces assigned to a foreign country under this section may not exceed six unless specifically authorized by the Congress. The President may waive this limitation if he determines and reports to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, 30 days prior to the introduction of the additional military personnel, that United States national interests require that more than six members of the Armed Forces be assigned under this section to carry out international security assistance programs in a country not specified in this paragraph. Pakistan, Tunisia, El Salvador, Honduras, Colombia, Indonesia, the Republic of Korea, the Philippines, Thailand, Egypt, Jordan, Morocco, Saudi Arabia, Greece, Portugal, Spain, and Turkey are authorized to have military personnel strengths larger than six under this section to carry out international security assistance programs.

(2) The total number of members of the Armed Forces assigned under this section to a foreign country in a fiscal year may not ex-

ceed the number justified to the Congress for that country in the congressional presentation materials for that fiscal year, unless the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives are notified 30 days in advance of the introduction of the additional military personnel.

(d) Effective October 1, 1989, the entire costs (excluding salaries of the United States military personnel other than the Coast Guard) of overseas management of international security assistance programs under this section shall be charged to or reimbursed from funds made available to carry out this chapter or the Arms Export Control Act, other than any such costs which are either paid directly for such defense services under section 21(a) of the Arms Export Control Act or reimbursed from charges for services collected from foreign governments pursuant to section 21(e) and section 43(b) of that Act.

(e) Members of the Armed Forces assigned to a foreign country under this section shall serve under the direction and supervision of the Chief of the United States Diplomatic Mission to that country.

(f) The President shall continue to instruct United States diplomatic and military personnel in the United States missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment, unless they are specifically instructed to do so by an appropriate official of the executive branch.

8. SEALIFT AND SHIPBUILDING PROGRAMS

a. National Defense Authorization Act for Fiscal Year 1994

(Public Law 104–106, approved Feb. 10, 1992)

TITLE XIII—DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE

* * * * * * *

Subtitle D—National Shipbuilding Initiative

SEC. 1351. [10 U.S.C. 2501 note] SHORT TITLE.

This subtitle may be cited as the "National Shipbuilding and Shipyard Conversion Act of 1993".

SEC. 1352. [10 U.S.C. 2501 note] NATIONAL SHIPBUILDING INITIATIVE.

(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common

modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

SEC. 1353. [10 U.S.C. 2501 note] DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

SEC. 1354. [10 U.S.C. 2501 note] DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

(a) ARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

(B) assessments of potential markets for maritime products; and

(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Defense Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.

* * * * * * *

SEC. 1363. SHIPYARD CONVERSION AND REUSE STUDIES.

(a) STUDIES REQUIRED.—The Secretary of Defense shall make community adjustment and diversification assistance available under section 2391(b) of title 10, United States Code, for the purpose of—

(1) conducting a study regarding the feasibility of converting and reutilizing the Charleston Naval Shipyard, South Carolina, as a facility primarily oriented toward commercial use; and

(2) conducting a study regarding the feasibility of converting and reutilizing the Mare Island Naval Shipyard, California, as a facility primarily oriented toward commercial use.

(b) FUNDING.—Of the amount made available pursuant to section 1302(a), $500,000 shall be available to carry out each of the studies required by subsection (a).

---

b. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

SEC. 375. [10 U.S.C. 7291 note] CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.

(a) CONSIDERATION OF VESSEL LOCATION IN THE AWARD OF LAYBERTH CONTRACTS.—As a factor in the evaluation of bids and proposals for the award of contracts to layberth sealift vessels of the Department of the Navy, the Secretary of the Navy shall in-

clude the location of the vessels, including whether the vessels should be layberthed at locations where—

(1) members of the Armed Forces are likely to be loaded onto the vessels; and

(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

(b) ESTABLISHMENT OF LOCATION AS A MAJOR CRITERION.—In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

(c) APPLICABILITY.—Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].

* * * * * * *

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle C—Fast Sealift Program

SEC. 1021. [10 U.S.C. 7291 note] PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.

(a) ACQUISITION AND CONVERSION OF U.S. BUILT VESSELS.—Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

(2) to convert in United States shipyards vessels built in United States shipyards.

(b) ACQUISITION OF FIVE FOREIGN-BUILT VESSELS.—Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.

SEC. 1022. MODIFICATION OF FAST SEALIFT PROGRAM.

[Omitted—Amendment]

SEC. 1023. REPORT ON OBLIGATIONS FOR STRATEGIC SEALIFT.

(a) REPORT.—The Secretary of Defense shall submit to the Congress a report on the specific purposes for which the Secretary intends to obligate during fiscal year 1993 the funds available for the procurement of strategic sealift. The information in the report shall be presented by program, project, and activity.

(b) LIMITATION.—Funds appropriated to the Navy for procurement for shipbuilding and conversion and available for strategic sealift may not be obligated during fiscal year 1993 until 30 days after the date on which the Secretary of Defense submits the report required by subsection (a).

SEC. 1024. NATIONAL DEFENSE SEALIFT FUND.

(a) [Subsection (a) added a new section 2218 to title 10, United States Code.]

(b) TRANSFER AUTHORITY.—(1) Subject to paragraph (2), and to the extent provided in appropriations Acts, the Secretary of Defense may transfer to the National Defense Sealift Fund for construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels not to exceed $1,875,100,000 from unobligated balances of appropriations made to the Navy for fiscal years 1990, 1991, and 1992 for shipbuilding and conversion, Navy, for sealift.

(2) Funds transferred to the National Defense Sealift Fund pursuant to paragraph (1) shall remain available for the same period for which the transferred funds were originally appropriated.

(c) AUTHORIZATION FOR FISCAL YEAR 1993.—There is authorized to be appropriated to the National Defense Sealift Fund for fiscal year 1993 $613,200,000 for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels or for installation and maintenance of defense features necessary for the national defense 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) FISCAL YEAR 1993 LIMITATION.—Not more than $10,000,000 in the National Defense Sealift Fund may be obligated during fiscal year 1993 until 30 days after the date on which the Secretary of Defense submits to Congress a report on the specific purposes for which funds made available from such Fund during fiscal year 1993 are to be used. The information in the report shall be stated by program, project, and activity.

Subtitle D—Defense Maritime Logistical Readiness

SEC. 1031. [10 U.S.C. 7291 note] REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY.

(a) IN GENERAL.—The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1683) shall be constructed and designed to commercial specifications.

(b) INTERAGENCY WORKING GROUP TO FORMULATE A PROGRAM TO PRESERVE SHIPYARD INDUSTRIAL BASE.—(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of Transportation, the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

(c) REPORT ON SHIP DUMPING PRACTICES.—The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

(d) REPORT ON DEFENSE CONTRACTS.—The Secretary of Defense shall prepare a report on—

(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

(e) REPORT ON ADEQUACY OF UNITED STATES SHIPBUILDING INDUSTRY.—The Secretary of Defense shall prepare a report on—

(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

(f) SUBMISSION OF REPORTS.—The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

(g) PENALTY FOR FAILURE TO COMPLY.—(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction, repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

(2) Paragraph (1) shall not apply if the President—

(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

(B) includes with the notice a brief explanation of the reasons for the delay and a statement that the plan will be submitted by April 15, 1994.

(h) DEFINITIONS.—For purposes of subsection (c):

(1) The term "foreign shipyard" includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(2) The term "subsidy" includes any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(3) The term "vessel" means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).

c. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 20, 1989)

TITLE XIV—GENERAL PROVISIONS

* * * * * * *

PART B—NAVAL VESSELS AND SHIPYARDS

* * * * * * *

SEC. 1424. [10 U.S.C. 7291 note] FAST SEALIFT PROGRAM

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

(b) PROGRAM REQUIREMENTS.—The program under this section shall be carried out as follows:

(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

(A) are manufactured in the United States; and

(B) have more than half of their value, in terms of cost, added in the United States.

(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

(A) the system or equipment is not available; or

(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

(c) CHARTER OF VESSELS CONSTRUCTED.—(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the Secretary, in consultation with the Administrator of the Maritime Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association, shall be determined in the

manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)); and

(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that that operation would not unfairly compete with another United States-flag vessel.

(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

(d) REPORTS TO CONGRESS.—(1) Not later than six months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

(2) Not later than three years after the date of the enactment of this Act [Nov. 5, 1990], the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

(4) The vessels constructed under the program shall incorporate propulsion systems, bridge and machinery control systems, and interior communications equipment manufactured in the United States.

(e) AVAILABILITY OF FUNDS.—Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.

9. DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES

a. Department of Defense Appropriations Act, 2001

(Public Law 106–259, approved Aug. 9, 2000)

SEC. 8061.[1] (a) [10 U.S.C. 374 note] 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.

(b) [50 U.S.C. 403f note] None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

b. National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle C—Support for Civilian Law Enforcement and Counter Drug Activities

* * * * * * *

SEC. 1023. [10 U.S.C. 382 note] MILITARY ASSISTANCE TO CIVIL AUTHORITIES TO RESPOND TO ACT OR THREAT OF TERRORISM.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance to civil authorities in responding to an act of terrorism or threat of an act of terrorism, including an act of terrorism or threat of an act of terrorism that involves a weapon of mass destruction, within the United States, if the Secretary determines that—

(1) special capabilities and expertise of the Department of Defense are necessary and critical to respond to the act of terrorism or the threat of an act of terrorism; and

(2) the provision of such assistance will not adversely affect the military preparedness of the Armed Forces.

(b) NATURE OF ASSISTANCE.—Assistance provided under subsection (a) may include the deployment of Department of Defense personnel and the use of any Department of Defense resources to

[1] An identical provision has appeared in previous Department of Defense appropriations Acts.

the extent and for such period as the Secretary of Defense determines necessary to prepare for, prevent, or respond to an act or threat of an act of terrorism described in that subsection. Actions taken to provide the assistance may include the prepositioning of Department of Defense personnel, equipment, and supplies.

(c) REIMBURSEMENT.—(1) Except as provided in paragraph (2), assistance provided under this section shall be provided on a reimbursable basis. Notwithstanding any other provision of law, the amounts of reimbursement shall be limited to the amounts of the incremental costs incurred by the Department of Defense to provide the assistance.

(2) In extraordinary circumstances, the Secretary of Defense may waive the requirement for reimbursement if the Secretary determines that such a waiver is in the national security interests of the United States and submits to Congress a notification of the determination.

(3) If funds are appropriated for the Department of Justice to cover the costs of responding to an act or threat of an act of terrorism for which assistance is provided under subsection (a), the Attorney General shall reimburse the Department of Defense out of such funds for the costs incurred by the Department in providing the assistance, without regard to whether the assistance was provided on a nonreimbursable basis pursuant to a waiver under paragraph (2).

(d) ANNUAL LIMITATION ON FUNDING.—Not more than $10,000,000 may be obligated to provide assistance under subsection (a) during any fiscal year.

(e) PERSONNEL RESTRICTIONS.—In providing assistance under this section, a member of the Army, Navy, Air Force, or Marine Corps may not, unless otherwise authorized by law—

(1) directly participate in a search, seizure, arrest, or other similar activity; or

(2) collect intelligence for law enforcement purposes.

(f) NONDELEGABILITY OF AUTHORITY.—(1) The Secretary of Defense may not delegate to any other official the authority to make determinations and to authorize assistance under this section.

(2) The Attorney General may not delegate to any other official authority to make a request for assistance under subsection (a).

(g) RELATIONSHIP TO OTHER AUTHORITY.—The authority provided in this section is in addition to any other authority available to the Secretary of Defense, and nothing in this section shall be construed to restrict any authority regarding use of members of the Armed Forces or equipment of the Department of Defense that was in effect before the date of the enactment of this Act.

(h) DEFINITIONS.—In this section:

(1) THREAT OF AN ACT OF TERRORISM.—The term "threat of an act of terrorism" includes any circumstance providing a basis for reasonably anticipating an act of terrorism, as determined by the Secretary of Defense in consultation with the Attorney General and the Secretary of the Treasury.

(2) WEAPON OF MASS DESTRUCTION.—The term "weapon of mass destruction" has the meaning given the term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

(i) DURATION OF AUTHORITY.—The authority provided by this section applies during the period beginning on October 1, 1999, and ending on September 30, 2004.

SEC. 1024. [10 U.S.C. 124 note] CONDITION ON DEVELOPMENT OF FORWARD OPERATING LOCATIONS FOR UNITED STATES SOUTHERN COMMAND COUNTER-DRUG DETECTION AND MONITORING FLIGHTS.

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

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

SEC. 1025. [10 U.S.C. 113 note] ANNUAL REPORT ON UNITED STATES MILITARY ACTIVITIES IN COLOMBIA.

Not later than January 1 of each year, 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 detailing the number of members of the United States Armed Forces deployed or otherwise assigned to duty in Colombia at any time during the preceding year, the length and purpose of the deployment or assignment, and the costs and force protection risks associated with such deployments and assignments.

SEC. 1026. REPORT ON USE OF RADAR SYSTEMS FOR COUNTER-DRUG DETECTION AND MONITORING.

Not later than May 1, 2000, 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 a report containing an evaluation of the effectiveness of the Wide Aperture Radar Facility, Tethered Aerostat Radar System, Ground Mobile Radar, and Relocatable Over-The-Horizon Radar in maritime, air, and land counter-drug detection and monitoring.

SEC. 1027. PLAN REGARDING ASSIGNMENT OF MILITARY PERSONNEL TO ASSIST IMMIGRATION AND NATURALIZATION SERVICE AND CUSTOMS SERVICE.

(a) PREPARATION OF PLAN.—(1) The Secretary of Defense shall prepare a plan to assign members of the Army, Navy, Air Force, or Marine Corps to assist the Immigration and Naturalization Service or the United States Customs Service should the President determine, and the Attorney General or the Secretary of the Treasury, as the case may be, certify, that military personnel are required to respond to a threat to national security posed by the entry into the United States of terrorists or drug traffickers.

(2) The Secretary shall ensure that activities proposed to be performed by military personnel under the plan are consistent with

section 1385 of title 18, United States Code (popularly known as the Posse Comitatus Act), and shall include in the plan a training program for military personnel who would be assigned to assist Federal law enforcement agencies—

(A) in preventing the entry of terrorists and drug traffickers into the United States; and

(B) in the inspection of cargo, vehicles, and aircraft at points of entry into the United States for weapons of mass destruction, prohibited narcotics, or other terrorist or drug trafficking items.

(b) REPORT ON USE OF MILITARY PERSONNEL TO SUPPORT CIVILIAN LAW ENFORCEMENT.—Not later than May 1, 2000, 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 a report containing—

(1) the plan required by subsection (a);

(2) a discussion of the risks and benefits associated with using military personnel to provide the law enforcement support described in subsection (a)(2);

(3) recommendations regarding the functions outlined in the plan most appropriate to be performed by military personnel; and

(4) the total number of active and reserve members, and members of the National Guard whose activities were supported using funds provided under section 112 of title 32, United States Code, who participated in drug interdiction activities or otherwise provided support for civilian law enforcement during fiscal year 1999.

---

c. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1996)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle C—Counter-Drug Activities

* * * * * * *

SEC. 1033. AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF PERU AND COLOMBIA.

(a) AUTHORITY TO PROVIDE SUPPORT.—Subject to subsection (f), the Secretary of Defense may provide either or both of the foreign governments named in subsection (b) with the support described in subsection (c) for the counter-drug activities of that government. In providing support to a government under this section, the Secretary of Defense shall consult with the Secretary of State. The support provided under the authority of this section shall be in addition to support provided to the governments under any other provision of law.

(b) GOVERNMENTS ELIGIBLE TO RECEIVE SUPPORT.—The foreign governments eligible to receive counter-drug support under this section are as follows:

(1) The Government of Peru, for fiscal years 1998 through 2002.

(2) The Government of Colombia, for fiscal years 1998 through 2006.

(c) TYPES OF SUPPORT.—The authority under subsection (a) is limited to the provision of the following types of support to a government named in subsection (b):

(1) The types of support specified in paragraphs (1), (2), and (3) of section 1031(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2637).

(2) The transfer of riverine patrol boats.

(3) The maintenance and repair of equipment of the government that is used for counter-drug activities.

(d) APPLICABILITY OF OTHER SUPPORT AUTHORITIES.—Except as otherwise provided in this section, the provisions of section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 374 note) shall apply to the provision of support under this section.

(e) FISCAL YEAR 1998 FUNDING; LIMITATION ON OBLIGATIONS.—(1) Of the amount authorized to be appropriated under section 301(20) for drug interdiction and counter-drug activities, an amount not to exceed $9,000,000 shall be available for the provision of support under this section.

(2) Amounts made available to carry out this section shall remain available until expended, except that the total amount obligated and expended under this section may not exceed $20,000,000 during any of the fiscal years 1999 through 2006.

(f) CONDITION ON PROVISION OF SUPPORT.—(1) The Secretary of Defense may not obligate or expend funds during a fiscal year to provide support under this section to a government named in subsection (b) until the end of the 15-day period beginning on the date on which the Secretary submits to the congressional committees the written certification described in subsection (g) for that fiscal year.

(2) In the case of the first fiscal year in which support is to be provided under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that—

(A) the Secretary submit to the congressional committees the riverine counter-drug plan described in subsection (h); and

(B) a period of 60 days expires after the date on which the report is submitted.

(3) In the case of subsequent fiscal years in which support is to be provided under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that the Secretary submit to the congressional committees any revision of the counter-drug plan described in subsection (h) applicable to that government.

(4) For purposes of this subsection, the term "congressional committees" means the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(B) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.

(g) REQUIRED CERTIFICATION.—The written certification required by subsection (f)(1) for a fiscal year is a certification of the following with respect to each government to receive support under this section:

(1) That the provision of the support to the government will not adversely affect the military preparedness of the United States Armed Forces.

(2) That the equipment and materiel provided as support will be used only by officials and employees of the government who have undergone background investigations by that government and have been approved by that government to perform counter-drug activities on the basis of the background investigations.

(3) That the government has certified to the Secretary of Defense that—

(A) the equipment and materiel provided as support will be used only by the officials and employees referred to in paragraph (2);

(B) none of the equipment or materiel will be transferred (by sale, gift, or otherwise) to any person or entity not authorized by the United States to receive the equipment or materiel; and

(C) the equipment and materiel will be used only for the purposes intended by the United States Government.

(4) That the government has implemented, to the satisfaction of the Secretary of Defense, a system that will provide an accounting and inventory of the equipment and materiel provided as support.

(5) That the departments, agencies, and instrumentalities of the government will grant United States Government personnel access to any of the equipment or materiel provided as support, or to any of the records relating to such equipment or materiel, under terms and conditions similar to the terms and conditions imposed with respect to such access under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(6) That the government will provide security with respect to the equipment and materiel provided as support that is substantially the same degree of security that the United States Government would provide with respect to such equipment and materiel.

(7) That the government will permit continuous observation and review by United States Government personnel of the use of the equipment and materiel provided as support under terms and conditions similar to the terms and conditions imposed with respect to such observation and review under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(h) RIVERINE COUNTER-DRUG PLAN.—The Secretary of Defense, in consultation with the Secretary of State, shall prepare for fiscal

year 1998 (and revise as necessary for subsequent fiscal years) a riverine counter-drug plan involving the governments named in subsection (b) to which support will be provided under this section. The plan for a fiscal year shall include the following with respect to each government to receive support under this section:

(1) A detailed security assessment, including a discussion of the threat posed by illicit drug traffickers in the foreign country.

(2) An evaluation of previous and ongoing riverine counter-drug operations by the government.

(3) An assessment of the monitoring of past and current assistance provided by the United States under this section to the government to ensure the appropriate use of such assistance.

(4) A description of the centralized management and coordination among Federal agencies involved in the development and implementation of the plan.

(5) A description of the roles and missions and coordination among agencies of the government involved in the development and implementation of the plan.

(6) A description of the resources to be contributed by the Department of Defense and the Department of State for the fiscal year or years covered by the plan and the manner in which such resources will be utilized under the plan.

(7) For the first fiscal year in which support is to be provided under this section, a schedule for establishing a riverine counter-drug program that can be sustained by the government within five years, and for subsequent fiscal years, a description of the progress made in establishing and carrying out the program.

(8) A reporting system to measure the effectiveness of the riverine counter-drug program.

(9) A detailed discussion of how the riverine counter-drug program supports the national drug control strategy of the United States.

SEC. 1034. ANNUAL REPORT ON DEVELOPMENT AND DEPLOYMENT OF NARCOTICS DETECTION TECHNOLOGIES.

(a) REPORT REQUIREMENT.—Not later than December 1st of each year, the Director of the Office of National Drug Control Policy shall submit to Congress and the President a report on the development and deployment of narcotics detection technologies by Federal agencies. Each such report shall be prepared in consultation with the Secretary of Defense, the Secretary of State, the Secretary of Transportation, and the Secretary of the Treasury.

(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall include—

(1) a description of each project implemented by a Federal agency relating to the development or deployment of narcotics detection technology;

(2) the agency responsible for each project described in paragraph (1);

(3) the amount of funds obligated or expended to carry out each project described in paragraph (1) during the fiscal year

in which the report is submitted or during any fiscal year preceding the fiscal year in which the report is submitted;

(4) the amount of funds estimated to be obligated or expended for each project described in paragraph (1) during any fiscal year after the fiscal year in which the report is submitted to Congress; and

(5) a detailed timeline for implementation of each project described in paragraph (1).

---

d. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle C—Counter-Drug Activities

SEC. 1031. AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF MEXICO.

(a) AUTHORITY TO PROVIDE ADDITIONAL SUPPORT.—Subject to subsection (e), during fiscal years 1997 and 1998, the Secretary of Defense may provide the Government of Mexico with the support described in subsection (b) for the counter-drug activities of the Government of Mexico. In providing support to the Government of Mexico under this section, the Secretary of Defense shall consult with the Secretary of State. The support provided under the authority of this subsection shall be in addition to support provided to the Government of Mexico under any other provision of law.

(b) TYPES OF SUPPORT.—The authority under subsection (a) is limited to the provision of the following types of support:

(1) The transfer of nonlethal protective and utility personnel equipment.

(2) The transfer of the following nonlethal specialized equipment:

(A) Navigation equipment.

(B) Secure and nonsecure communications equipment.

(C) Photo equipment.

(D) Radar equipment.

(E) Night vision systems.

(F) Repair equipment and parts for equipment referred to in subparagraphs (A), (B), (C), (D), and (E).

(3) The transfer of nonlethal components, accessories, attachments, parts (including ground support equipment), firmware, and software for aircraft or patrol boats, and related repair equipment.

(4) The maintenance and repair of equipment of the Government of Mexico that is used for counter-drug activities.

(c) APPLICABILITY OF OTHER SUPPORT AUTHORITIES.—Except as otherwise provided in this section, the provisions of section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 374 note) shall apply to the provision of support under this section.

(d) FUNDING.—Of the amount authorized to be appropriated under section 301(19) for drug interdiction and counter-drug activities, an amount not to exceed $8,000,000 shall be available for the provision of support under this section. Funds made available for fiscal year 1997 under this subsection and unobligated by September 30, 1997, may be obligated during fiscal year 1998. No funds are authorized to be appropriated for fiscal year 1998 for the provision of support under this section.

(e) LIMITATIONS.—(1) The Secretary may not obligate or expend funds to provide support under this section until 15 days after the date on which the Secretary submits to the committees referred to in paragraph (3) the certification described in paragraph (2).

(2) The certification referred to in paragraph (1) is a written certification of the following:

(A) That the provision of support under this section will not adversely affect the military preparedness of the United States Armed Forces.

(B) That the equipment and materiel provided as support will be used only by officials and employees of the Government of Mexico who have undergone a background check by that government.

(C) That the Government of Mexico has certified to the Secretary that—

(i) the equipment and material provided as support will be used only by the officials and employees referred to in subparagraph (B);

(ii) none of the equipment or materiel will be transferred (by sale, gift, or otherwise) to any person or entity not authorized by the United States to receive the equipment or materiel; and

(iii) the equipment and materiel will be used only for the purposes intended by the United States Government.

(D) That the Government of Mexico has implemented, to the satisfaction of the Secretary, a system that will provide an accounting and inventory of the equipment and materiel provided as support.

(E) That the departments, agencies, and instrumentalities of the Government of Mexico will grant United States Government personnel access to any of the equipment or materiel provided as support, or to any of the records relating to such equipment or materiel, under terms and conditions similar to the terms and conditions imposed with respect to such access under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(F) That the Government of Mexico will provide security with respect to the equipment and materiel provided as support that is substantially the same degree of security that the United States Government would provide with respect to such equipment and materiel.

(G) That the Government of Mexico will permit continuous observation and review by United States Government personnel of the use of the equipment and materiel provided as support under terms and conditions similar to the terms and conditions imposed with respect to such observation and review

under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(3) The committees referred to in this paragraph are the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(B) The Committee on National Security and the Committee on International Relations of the House of Representatives.

---

e. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle B—Counter-Drug Activities

SEC. 1011. DEPARTMENT OF DEFENSE SUPPORT FOR COUNTER-DRUG ACTIVITIES.

(a) [Omitted—Amendment]

(b) [10 U.S.C. 374 note] CONDITION ON TRANSFER OF FUNDS.—Funds appropriated for the Department of Defense may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states—

(1) the amount authorized to be transferred;

(2) the account from which such amount is authorized to be transferred; and

(3) the account to which such amount is authorized to be transferred.

(c) CONDITION ON DETAILING PERSONNEL.—Personnel of the Department of Defense may not be detailed to another department or agency in order to implement the National Drug Control Strategy unless the Secretary of Defense certifies to Congress that the detail of such personnel is in the national security interest of the United States.

(d) RELATIONSHIP TO OTHER LAW.—A provision of law may not be construed as modifying or superseding the provisions of subsection (b) or (c) unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that such provision of law modifies or supersedes the provisions of subsection (b) or (c), as the case may be.

SEC. 1012. [22 U.S.C. 2291–4] OFFICIAL IMMUNITY FOR AUTHORIZED EMPLOYEES AND AGENTS OF THE UNITED STATES AND FOREIGN COUNTRIES ENGAGED IN INTERDICTION OF AIRCRAFT USED IN ILLICIT DRUG TRAFFICKING.

(a) EMPLOYEES AND AGENTS OF FOREIGN COUNTRIES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of a foreign country (including members of the armed forces of that country) to interdict or attempt to interdict an aircraft in that country's territory or airspace if—

(1) that aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking; and

(2) the President of the United States, before the interdiction occurs, has determined with respect to that country that—

(A) interdiction is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and

(B) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force directed against the aircraft.

(b) EMPLOYEES AND AGENTS OF THE UNITED STATES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of the United States (including members of the Armed Forces of the United States) to provide assistance for the interdiction actions of foreign countries authorized under subsection (a). The provision of such assistance shall not give rise to any civil action seeking money damages or any other form of relief against the United States or its employees or agents (including members of the Armed Forces of the United States).

(c) DEFINITIONS.—For purposes of this section:

(1) The terms "interdict" and "interdiction", with respect to an aircraft, mean to damage, render inoperative, or destroy the aircraft.

(2) The term "illicit drug trafficking" means illicit trafficking in narcotic drugs, psychotropic substances, and other controlled substances, as such activities are described by any international narcotics control agreement to which the United States is a signatory, or by the domestic law of the country in whose territory or airspace the interdiction is occurring.

(3) The term "assistance" includes operational, training, intelligence, logistical, technical, and administrative assistance.

---

f. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23 1992)

TITLE X—GENERAL PROVISIONS

* * * * * * *

Subtitle E—Counter-Drug Activities

* * * * * * *

SEC. 1043. [10 U.S.C. 124 note] COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN.

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

gal drugs into the United States. Such requirements shall be designed—

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

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

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

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

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

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

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

(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to determine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

(f) DEFINITION.—For purposes of this section, the term "counter-drug detection and monitoring systems" means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.

SEC. 1044. EXTENSION OF AUTHORITY TO TRANSFER EXCESS PERSONAL PROPERTY.

[Omitted—Amendment]

SEC. 1045. PILOT OUTREACH PROGRAM TO REDUCE DEMAND FOR ILLEGAL DRUGS.

[Repealed by section 571(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).**]**

---

g. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE X—DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES

* * * * * * *

SEC. 1004. [10 U.S.C. 374 note] ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES

(a) SUPPORT TO OTHER AGENCIES.—During fiscal years 1991 through 2002, the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

(b) TYPES OF SUPPORT.—The purposes for which the Secretary may provide support under subsection (a) are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in subparagraph (A) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities of the Department of Defense or any Federal, State, or local law enforcement agency within or outside the United States or counter-drug activities of a foreign law enforcement agency outside the United States.

(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside 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.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist and intelligence analysis services.

(10) Aerial and ground reconnaissance.

(c) LIMITATION ON COUNTER-DRUG REQUIREMENTS.—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.

(h) CONGRESSIONAL NOTIFICATION OF FACILITIES PROJECTS.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

(2) Paragraph (1) applies to an unspecified minor military construction project that—

(A) is intended for the modification or repair of a Department of Defense facility for the purpose set forth in subsection (b)(4); and

(B) has an estimated cost of more than $500,000.

10. PANAMA CANAL ACT OF 1979 (Public Law 96–70)

(Public Law 96–70, approved Sept. 27, 1979)

AN ACT To provide for the operation and maintenance of the Panama Canal under the Panama Canal Treaty of 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Panama Canal Act of 1979".

TABLE OF CONTENTS [1]

Sec. 1. Short title.
Sec. 2. Statement of purpose.
Sec. 3. Definitions.

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

Sec. 1101. Establishment, Purposes, Offices, and Residence of Commission.
Sec. 1102. Supervisory Board.
Sec. 1102a. General powers of Commission.
Sec. 1102b. Specific powers of Commission.
Sec. 1103. Administrator.
Sec. 1104. Deputy Administrator.
Sec. 1105. Consultative Committee.
Sec. 1106. Joint Commission on the Environment.
Sec. 1107. Travel expenses.
Sec. 1108. Defense of the Panama Canal.
Sec. 1109. Joint Sea Level Canal Study Committee.
Sec. 1110. Authority of the Ambassador.
Sec. 1111. Security legislation.
Sec. 1112. Code of Conduct for Commission personnel.
Sec. 1113. Office of Ombudsman.

CHAPTER 2—EMPLOYEES

Subchapter I—Panama Canal Commission Personnel

Sec. 1201. Definitions.
Sec. 1202. Appointment and compensation; duties.
Sec. 1203. Transfer of Federal employees.
Sec. 1204. Compensation of individuals in the uniformed services.
Sec. 1205. Deduction from basic pay of amounts due for supplies or services.
[Sec. 1206. Repealed]
[Sec. 1207. Repealed]
Sec. 1208. Privileges and immunities of certain employees.
Sec. 1209. Applicability of certain benefits.
Sec. 1210. Air transportation.

[1] This table of contents is not up-to-date. When sections 1206 and 1207 were repealed, conforming amendments were not made to the table of contents.

Subchapter II—Wage and Employment Practices

Sec. 1211. Definitions.
Sec. 1212. Panama Canal Employment System; merit and other employment requirements.
Sec. 1213. Employment standards.
[Sec. 1214. Repealed.]
[Sec. 1215. Repealed.]
Sec. 1216. Uniform application of standards and rates.
Sec. 1217. Recruitment and retention remuneration.
Sec. 1217a. Quarters allowances.
Sec. 1218. Benefits based on basic pay.
[Sec. 1219. Repealed.]
Sec. 1220. Review and adjustment of classifications, grades, and pay level.
Sec. 1221. Panama Canal Board of Appeals; duties.
Sec. 1222. Appeals to Board; procedure; finality of decisions.
[Sec. 1223. Repealed.]
Sec. 1224. Applicability of title 5, United States Code.
[Sec. 1225. Repealed.]

Subchapter III—Conditions of Employment and Placement

Sec. 1231. Transferred on reemployed employees.
Sec. 1232. Placement.
Sec. 1233. Transition separation incentive payments.

Subchapter IV—Retirement

Sec. 1241. Early retirement eligibility.
Sec. 1242. Early retirement computation.
Sec. 1243. Retirement under special treaty provisions.
Sec. 1244. Obligation of Commission for unfunded liability.
Sec. 1245. Administration of certain disability benefits.
[Sec. 1246. Repealed.]

Subchapter V—Leave

[Sec. 1251. Repealed.]

Subchapter VI—Application to Related Personnel

Sec. 1261. Law enforcement; Canal Zone Civilian Personnel Policy Coordinating Board; related employees.

Subchapter VII—Labor-Management Relations

Sec. 1271. Labor-management relations.

CHAPTER 3—FUNDS AND ACCOUNTS

Subchapter I—Funds

[Sec. 1301. Repealed.]
Sec. 1302. Panama Canal Revolving Fund.
Sec. 1303. Emergency authority.
Sec. 1304. Borrowing authority.
Sec. 1305. Dissolution of Commission.
Sec. 1306. Printing.

Subchapter II—Accounting Policies and Audits

Sec. 1311. Accounting policies.
[Sec. 1312. Repealed.]
Sec. 1313. Audits.

Subchapter III—Interagency Accounts

Sec. 1321. Interagency services; reimbursements.

Subchapter IV—Postal Matters

Sec. 1331. Postal service.

Subchapter V—Accounts With the Republic of Panama

Sec. 1341. Payments to the Republic of Panama.

Sec. 1342. Transactions with the Republic of Panama.
Sec. 1343. Disaster relief.
Sec. 1344. Congressional restraints on property transfers and tax expenditures.

CHAPTER 4—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

Subchapter I—General Provisions

Sec. 1401. Settlement of claims generally.

Subchapter II—Vessel Damage

Sec. 1411. Injuries in locks of Canal.
Sec. 1412. Injuries outside locks.
Sec. 1413. Measures of damages generally.
Sec. 1414. Delays for which no responsibility is assumed.
Sec. 1415. Settlement of claims.
Sec. 1416. Actions on claims.
Sec. 1417. Investigation of accident or injury giving rise to claim.
Sec. 1418. Board of Local Inspectors.
Sec. 1419. Insurance.

CHAPTER 5—PUBLIC PROPERTY

Sec. 1501. Assets and liabilities of Panama Canal Company.
Sec. 1502. Transfers and cross-servicing between agencies.
Sec. 1503. Disposition of property of the United States.
Sec. 1504. Transfer of property to Panama.

CHAPTER 6—TOLLS FOR USE OF THE PANAMA CANAL

Sec. 1601. Prescription of measurement rules and rates of tolls.
Sec. 1602. Bases of tolls.
Sec. 1603. Calculation of interest.
Sec. 1604. Procedures.
[Sec. 1605. Repealed.]

CHAPTER 7—GENERAL REGULATIONS

[Sec. 1701. Repealed.]
[Sec. 1702. Repealed.]

CHAPTER 8—SHIPPING AND NAVIGATION

Subchapter I—Operation of Canal

Sec. 1801. Operating regulations.

Subchapter II—Inspection of Vessels

Sec. 1811. Vessels subject to inspection.
Sec. 1812. Foreign vessels.
Sec. 1813. Regulations governing inspection.

[TITLE II—REPEALED.]

TITLE III—GENERAL PROVISIONS

CHAPTER 1—PROCUREMENT

Sec. 3101. Procurement system.
Sec. 3102. Panama Canal Board of Contract Appeals.

CHAPTER 2—IMMIGRATION

Sec. 3201. Special immigrants.

CHAPTER 3—REPORTS; AMENDMENTS; REPEALS AND REDESIGNATION; EFFECTIVE DATE

Sec. 3301. Report.
Sec. 3302. Exemption from Metric Conversion Act of 1975.
Sec. 3303. Repeals and redesignation.
Sec. 3304. Effective date.

STATEMENT OF PURPOSE

SEC. 2. [22 U.S.C. 3601] It is the purpose of this Act to provide legislation necessary or desirable for the implementation of the Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama and of the related agreements accompanying that Treaty.

DEFINITIONS

SEC. 3. [22 U.S.C. 3602] (a) For purposes of this Act—

(1) references to the Panama Canal Treaty of 1977 refer to the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977; and

(2) references to the Panama Canal Treaty of 1977 and related agreements refer to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977; and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

(b) Subject to the provisions of subsection (c) of this section, for purposes of applying laws of the United States and regulations issued pursuant to such laws with respect to transactions, occurrences, or status on or after October 1, 1979—

(1) "Canal Zone" shall be deemed to refer to the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;

(2) "Canal Zone waters" and "waters of the Canal Zone" shall be deemed to refer to "Panama Canal waters" and "waters of the Panama Canal", respectively;

(3) "Government of the Canal Zone" or "Canal Zone Government" shall be deemed to refer to the United States of America;

(4) "Governor of the Canal Zone" or "Governor", wherever the reference is to the Governor of the Canal Zone, shall be deemed to refer to the Panama Canal Commission; and

(5) "Panama Canal Company" or "Company", wherever the reference is to the Panama Canal Company, shall be deemed to refer to the Panama Canal Commission.

(c) Any reference set forth in subsection (b) of this section shall apply except as otherwise provided in this Act or unless (1) such reference is inconsistent with the provisions of this Act, (2) in the context in which a term is used such reference is clearly not intended, or (3) a term refers to a time before October 1, 1979.

(d) For purposes of this Act:

(1) The term "Canal Transfer Date" means December 31, 1999, such date being the date specified in the Panama Canal Treaty of 1977 for the transfer of the Panama Canal from the United States of America to the Republic of Panama.

(2) The term "Panama Canal Authority" means the entity created by the Republic of Panama to succeed the Panama Canal Commission as of the Canal Transfer Date.

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

ESTABLISHMENT, PURPOSES, OFFICES, AND RESIDENCE OF COMMISSION

SEC. 1101. [22 U.S.C. 3611] (a) For the purposes of managing, operating, and maintaining the Panama Canal and its complementary works, installations and equipment, and of conducting operations incident thereto, in accordance with the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission (hereinafter in this Act referred to as the "Commission") is established as a wholly owned government corporation (as that term is used in chapter 91 of title 31, United States Code) within the executive branch of the Government of the United States. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

(b) The principal office of the Commission shall be located in the Republic of Panama in one of the areas made available for use of the United States under the Panama Canal Treaty of 1977 and related agreements, but the Commission may establish branch offices in such other places as it considers necessary or appropriate for the conduct of its business. Within the meaning of the laws of the United States relating to venue in civil actions, the Commission is an inhabitant and resident of the District of Columbia and the eastern judicial district of Louisiana.

SUPERVISORY BOARD

SEC. 1102. [22 U.S.C. 3612] (a) The Commission shall be supervised by a Board composed of nine members, one of whom shall be an officer of the Department of Defense. The officer of the Department of Defense who shall serve on the Board shall be designated by the Secretary of Defense and may continue to serve on the Board only while continuing to serve as an officer of the Department of Defense. Not less than five members of the Board shall be nationals of the United States and the remaining members of the Board shall be nationals of the Republic of Panama. Three members of the Board who are nationals of the United States shall hold no other office in, and shall not be employed by, the Government of the United States, and shall be chosen for the independent perspective they can bring to the Commission's affairs. Members of the Board who are nationals of the United States shall cast their votes as directed by the the officer of the Department of Defense designated by the Secretary of Defense to be a member of the Board.

(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act, except that, in

addition to such travel or transportation expenses, members of the Board who hold no other office with either the Government of the United States or the Republic of Panama for which they receive pay are authorized to be compensated at the daily equivalent of the annual rate of basic pay in effect for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which they are traveling to or from or attending meetings of the Board as provided in subsection (c) of this section or, as authorized by the Chairman of the Board, while on official Panama Canal Commission business.

(c) The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States. The Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, may act by proxy for any other member of the Board if that other member authorizes the proxy in writing and signs the proxy. The proxy may be counted to establish a quorum and may be used by the Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, to cast the vote of the absent Board member and to act for that member with all the powers that member would possess if present.

GENERAL POWERS OF COMMISSION

SEC. 1102a. [22 U.S.C. 3612a] (a) The Commission may adopt, alter, and use a corporate seal, which shall be judicially noticed.

(b) The Commission may by action of the Board of Directors adopt, amend, and repeal bylaws governing the conduct of its general business and the performance of the powers and duties granted to or imposed upon it by law.

(c) The Commission may sue and be sued in its corporate name, except that—

(1) the amenability of the Commission to suit is limited by Article VIII of the Panama Canal Treaty of 1977, section 1401 of this Act, and otherwise by law;

(2) an attachment, garnishment, or similar process may not be issued against salaries or other moneys owed by the Commission to its employees except as provided by section 5520a of title 5, United States Code, and sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, 662), or as otherwise specifically authorized by the laws of the United States; and

(3) the Commission is exempt from the payment of interest on claims and judgments.

(d) The Commission may enter into contracts, leases, agreements, or other transactions.

(e) The Commission—

(1) may determine the character of, and necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid; and

(2) may incur, allow, and pay its obligations and expenditures, subject to pertinent provisions of law generally applicable to Government corporations.

(f) The Commission shall have the priority of the Government of the United States in the payment of debts out of bankrupt estates.

(g)(1) The Commission may appoint any United States citizen to have the general powers of a notary public to perform, on behalf of Commission employees and their dependents outside the United States, any notarial act that a notary public is required or authorized to perform within the United States. Unless an earlier expiration is provided by the terms of the appointment, any such appointment shall expire three months after the Canal Transfer Date.

(2) Every notarial act performed by a person acting as a notary under paragraph (1) shall be as valid, and of like force and effect within the United States, as if executed by or before a duly authorized and competent notary public in the United States.

(3) The signature of any person acting as a notary under paragraph (1), when it appears with the title of that person's office, 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.

(h) The authority of the Commission under this section and section 1102b is subject to the Panama Canal Treaty of 1977 and related agreements, and to chapter 91 of title 31, United States Code.

SPECIFIC POWERS OF COMMISSION

SEC. 1102b. [22 U.S.C. 3612b] (a) The Commission may manage, operate, and maintain the Panama Canal.

(b) The Commission may construct or acquire, establish, maintain, and operate such activities, facilities, and appurtenances as necessary and appropriate for the accomplishment of the purposes of this Act, including the following:

(1) Docks, wharves, piers, and other shoreline facilities.

(2) Shops and yards.

(3) Marine railways, salvage and towing facilities, fuel-handling facilities, and motor transportation facilities.

(4) Power systems, water systems, and a telephone system.

(5) Construction facilities.

(6) Living quarters and other buildings.

(7) Warehouses, storehouses, a printing plant, and manufacturing, processing, or service facilities in connection therewith.

(8) Recreational facilities.

(c) The Commission may use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government.

(d) The Commission may take such actions as are necessary or appropriate to carry out the powers specifically conferred upon it.

(e) The Commission may conduct and promote commercial activities related to the management, operation, or maintenance of the Panama Canal. Any such commercial activity shall be carried

out consistent with the Panama Canal Treaty of 1977 and related agreements.

(f)(1) The Commission may seek and accept donations of funds, property, and services from individuals, foundations, corporations, and other private and public entities for the purpose of carrying out its promotional activities.

(2) The Commission shall establish written guidelines setting forth the criteria to be used in determining whether the acceptance of funds, property, or services authorized by paragraph (1) would reflect unfavorably upon the ability of the Commission (or any employee of the Commission) to carry out its responsibilities or official duties in a fair and objective manner or would compromise the integrity or the appearance of the integrity of its programs or of any official in those programs.

ADMINISTRATOR

SEC. 1103. [22 U.S.C. 3613] (a) There shall be an Administrator of the Commission who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President.

(b) The Administrator shall be paid compensation in an amount, established by the Board, not to exceed level III of the Executive Schedule.

(c) The Congress consents, for purposes of the 8th clause of article I, section 9 of the Constitution of the United States, to the acceptance by the individual serving as Administrator of the Commission of appointment by the Republic of Panama to the position of Administrator of the Panama Canal Authority. Such consent is effective only if that individual, while serving in both such positions, serves as Administrator of the Panama Canal Authority without compensation, except for payments by the Republic of Panama of travel and entertainment expenses, including per diem payments.

(d) If before the Canal Transfer Date the Republic of Panama appoints as the Administrator of the Panama Canal Authority the individual serving as the Administrator of the Commission and if that individual accepts the appointment—

(1) during any period during which that individual serves as both Administrator of the Commission and the Administrator of the Panama Canal Authority—

(A) the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), shall not apply to that individual with respect to service as the Administrator of the Panama Canal Authority;

(B) that individual, with respect to participation in any particular matter as the Administrator of the Panama Canal Commission, is not subject to section 208(a) of title 18, United States Code, insofar as that section would otherwise apply to that matter only because the matter will have a direct and predictable effect on the financial interest of the Panama Canal Authority;

(C) that individual is not subject to sections 203 and 205 of title 18, United States Code, with respect to official

acts performed as an agent or attorney for or otherwise representing the Panama Canal Authority; and

(D) that individual is not subject to sections 501(a) and 502(a)(4) of the Ethics in Government Act of 1978 (5 U.S.C. App.), with respect to compensation received for, and service in, the position of Administrator of the Panama Canal Authority; and

(2) effective upon termination of the individual's appointment as Administrator of the Panama Canal Commission at noon on the Canal Transfer Date, that individual is not subject to section 207 of title 18, United States Code, with respect to acts done in carrying out official duties as Administrator of the Panama Canal Authority.

DEPUTY ADMINISTRATOR

SEC. 1104. [22 U.S.C. 3614] (a) There shall be a Deputy Administrator of the Commission who shall be appointed by the President. The Deputy Administrator shall perform such duties as may be prescribed by the Board.

(b) The Deputy Administrator shall be paid compensation at a rate of pay, established by the Board, which does not exceed the rate of basic pay in effect for level IV of the Executive Schedule, and, if eligible, shall be paid the overseas recruitment and retention differential provided for in section 1217 of this Act.

CONSULTATIVE COMMITTEE

SEC. 1105. [22 U.S.C. 3615] (a) The President shall designate, and the Secretary of State shall coordinate the participation of, representatives of the United States to the Consultative Committee to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977.

(b) The Consultative Committee shall function as a diplomatic forum for the exchange of views between the United States and the Republic of Panama. The Committee shall advise the United States Government and the Government of the Republic of Panama on matters of policy affecting the operation of the Panama Canal. The Committee shall have no authority to direct the Commission or any other department or agency of the United States to initiate or withhold action.

JOINT COMMISSION ON THE ENVIRONMENT

SEC. 1106. [22 U.S.C. 3616] (a) The United States and the Republic of Panama, in accordance with the Panama Canal Treaty of 1977, shall establish a Joint Commission on the Environment (hereinafter in this section referred to as the "Joint Commission") to be composed of not more than three representatives of the United States and three representatives of the Republic of Panama, or such other equivalent numbers of representatives as may be agreed upon by the Governments of the two countries. The United States members of the Joint Commission shall periodically review the implementation of the Panama Canal Treaty of 1977 with respect to its impact on the environment and shall, jointly with the representatives of the Government of Panama, make recommenda-

tions to the United States Government and the Government of the Republic of Panama with respect to ways to avoid or mitigate adverse environmental impacts resulting from actions taken pursuant to such Treaty.

(b) Representatives of the United States on the Joint Commission shall be appointed by the President and shall serve at the pleasure of the President. Such representatives shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

(c) Any Federal employee subject to the civil service laws and regulations who is detailed to serve with, or appointed by, the United States representatives on the Joint Commission shall not lose any pay, seniority, or other rights or benefits by reason of such detail or appointment.

(d) The United States representatives on the Joint Commission may, to such extent or in such amounts as are provided in advance in appropriation Acts, appoint and fix the compensation of such personnel as the representatives of the United States on the Joint Commission may consider necessary for the participation of the United States on the Joint Commission.

(e) The United States representatives on the Joint Commission may, in cooperation with the representatives of the Republic of Panama on the Joint Commission in conducting its affairs, subject to the approval of such rules by the Governments of the United States and the Republic of Panama.

TRAVEL EXPENSES

SEC. 1107. [22 U.S.C. 3617] While away from their homes, regular places of business, or official stations in performance of services under this chapter, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 1105 of this Act and on the Joint Commission on the Environment referred to in section 1106 of this Act shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5, United States Code.

DEFENSE OF THE PANAMA CANAL

SEC. 1108. [22 U.S.C. 3618] In the event of an armed attack against the Panama Canal, or when, in the opinion of the President, conditions exist which threaten the security of the Canal, the Administrator of the Commission shall, upon the order of the President, comply with such directives as the United States military officer charged with the protection and defense of the Panama Canal may consider necessary in the exercise of his duties.

JOINT SEA LEVEL CANAL STUDY COMMITTEE

SEC. 1109. [22 U.S.C. 3619] (a) The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama (to study the possibility of a sea

level canal in the Republic of Panama) pursuant to Article XII of the Panama Canal Treaty of 1977.

(b) Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to paragraph 1 of Article XII of the Panama Canal Treaty of 1977, the test of the study shall be transmitted by the President of the Senate and to the Speaker of the House of Representatives.

(c) No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express congressional authorization after submission of the study by the President as provided in subsection (b) of this section.

AUTHORITY OF THE AMBASSADOR

SEC. 1110. [22 U.S.C. 3620] (a) The United States Ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b)(1) The Commission shall not be subject to the direction or supervision of the United States Chief of Mission in the Republic of Panama with respect to the responsibilities of the Commission for the operation, management, or maintenance of the Panama Canal, as established in this or any other Act or in the Panama Canal Treaty of 1977 and related agreements, except that the Commission shall keep the Ambassador fully and currently informed with respect to all activities and operations of the Commission.

(2) Except as provided in paragraph (1) of this subsection, section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) shall apply with respect to the activities of the Commission.

(c)(1) The Secretary of State may enter into one or more agreements to provide for the United States to furnish administrative services relating to the benefits described in paragraph (2) after December 31, 1999, and to establish appropriate procedures for providing advance funding for the services.

(2) The benefits referred to in paragraph (1) are the following:

(A) Pension, disability, and medical benefits provided by the Panama Canal Commission pursuant to section 1245.

(B) Compensation for work injuries covered by chapter 81 of title 5, United States Code.

SECURITY LEGISLATION

SEC. 1111. [22 U.S.C. 3621] It is the sense of the Congress that the best interests of the United States require that the President enter into negotiations with the Republic of Panama for the purpose of arranging for the stationing of United States military forces, after the termination of the Panama Canal Treaty of 1977, in the area comprising the Canal Zone before the effective date of this Act, and for the maintenance of installations and facilities, after the termination of such Treaty, for the use of United States military forces stationed in such area. The President shall report to the Congress in a timely manner the status of negotiations conducted pursuant to this section.

CODE OF CONDUCT FOR COMMISSION PERSONNEL

SEC. 1112. [22 U.S.C. 3622] (a) Before assuming the duties of his office or employment, each member of the Board of the Commission and each officer and employee of the Commission shall take an oath to discharge faithfully the duties of his office or employment. All employees of the Commission shall be subject to the laws of the United States regarding duties and responsibilities of Federal employees.

(b) Not later than 60 days after all the members of the Board of the Commission have been appointed, the Board shall adopt a code of conduct applicable to the persons referred to in subsection (a) of this section. The code of conduct shall contain provisions substantially equivalent to those contained in part 735 of title 5 of the Code of Federal Regulations on October 1, 1979. The code of conduct shall, at a minimum, contain provisions substantially equivalent to the following provisions of law:

(1) the provisions of chapter 11 of title 18, United States Code, as amended, relating to bribery, graft, or conflicts of interest, as appropriate to the employees concerned;

(2) section 7352 of title 5, United States Code, as amended;

(3) sections 207, 208, 285, 508, 641, 645, 1001, 1917, and 2071 of title 18, United States Code, as amended;

(4) section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), as amended;

(5) the Ethics in Government Act of 1978 (92 Stat. 1824), as amended; and

(6) those provisions of the laws and regulations of the Republic of Panama which are substantially equivalent to those of the United States set forth in this subsection.

(c) The Commission shall investigate any allegations regarding the violation of the code of conduct adopted pursuant to subsection (b) of this section. The Commission may recommend that the President suspend from the performance of his duties any member of the Board of the Commission or any officer or employee of the Commission, pending judicial proceedings by appropriate authorities concerning such allegations.

(d) The President shall negotiate suitable arrangements with the Republic of Panama whereby each nation shall agree to take all measures within its legal authority to assure that members of the Board of the Commission comply with the code of conduct established pursuant to subsection (b) of this section. Without prejudice to such jurisdiction as the United States may have with respect to members of the Board, the provisions of law enumerated in subsection (b) of this section shall be enforced with respect to members of the Board only in accordance with such arrangements.

(e)(1) Section 207 of title 18, United States Code, does not apply to a covered individual with respect to acts done in carrying out official duties as an officer or employee of the Panama Canal Authority.

(2) For purposes of paragraph (1), a covered individual is an officer or employee of the Panama Canal Authority who was an officer or employee of the Commission (other than the Administrator)

and whose employment with the Commission terminated at noon on the Canal Transfer Date.

(3) This subsection is effective as of the Canal Transfer Date.

(f)(1) The Congress consents to the following persons accepting civil employment (and compensation for that employment) with the Panama Canal Authority for which the consent of the Congress is required by the last paragraph of section 9 of article I of the Constitution of the United States, relating to acceptance of emoluments, offices, or titles from a foreign government:

(A) Retired members of the uniformed services.

(B) Members of a reserve component of the armed forces.

(C) Members of the Commissioned Reserve Corps of the Public Health Service.

(2) The consent of the Congress under paragraph (1) is effective without regard to subsection (b) of section 908 of title 37, United States Code (relating to approval required for employment of Reserve and retired members by foreign governments).

OFFICE OF OMBUDSMAN

SEC. 1113. [22 U.S.C. 3623] (a) There established within the Commission an Office of Ombudsman, to be directed by an Ombudsman, who shall be appointed by the Commission. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests, and suggestions of employees (and their dependents), of the Commission and other departments and agencies of the United States, including the Smithsonian Institution, conducting operations before the effective date of this Act in the area then comprising the Canal Zone concerning administrative problems, inefficiencies, and conflicts caused within departments and agencies of the United States, including the Smithsonian Institution, as a result of the implementation of the Panama Canal Treaty of 1977 and related agreements.

(b) The Ombudsman shall make findings and render assistance with respect to the complaints, grievances, requests, and suggestions submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Commission or any other department or agency of the United States, including the Smithsonian Institution.

(c) The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this Act, any other provision of law, or any Federal regulation.

(d) The Office of Ombudsman shall terminate upon the termination of the Panama Canal Treaty of 1977.

CHAPTER 2—EMPLOYEES

Subchapter I—Panama Canal Commission Personnel

DEFINITIONS

SEC. 1201. [22 U.S.C. 3641] As used in this chapter—

(1) "Executive agency" has the meaning given that term in section 105 of title 5, United States Code;

(2) "uniformed services" has the meaning given the term in section 2101(3) of title 5, United States Code;

(3) "competitive service" has the meaning given that term in section 2102 of title 5, United States Code; and

(4) "United States" when used in a geographic sense, means each of the several States and the District of Columbia.

APPOINTMENT AND COMPENSATION; DUTIES

SEC. 1202. [22 U.S.C. 3642] (a) In accordance with this chapter, the Commission may appoint, fix the compensation of, and define the authority and duties of officers and employees (other than the Administrator and Deputy Administrator) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals in the uniformed services, may, if appointed under this section or section 1104 of this Act, serve as officers or employees of the Commission.

(c) In the case of an individual who is an officer or employee of the Commission on November 17, 1997, and who has not had a break in service with the Commission since that date, the rate of basic pay for that officer or employee may not be less than the rate in effect for that officer or employee on that date except—

(1) as provided in a collective bargaining agreement;

(2) as a result of an adverse action against the officer or employee; or

(3) pursuant to a voluntary demotion.

TRANSFER OF FEDERAL EMPLOYEES

SEC. 1203. [22 U.S.C. 3643] (a) The head of any agency may enter into agreements for the transfer or detail to the Commission of any employee of that agency serving under a permanent appointment. Any employee who so transfers or is so detailed shall, upon completion of the employee's tour of duty with the Commission, be entitled to reemployment with the agency from which the employee was transferred or detailed without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had the employee not been so transferred or been so detailed.

(b) For purposes of this section, the term "agency" means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

(c) The Office of Personnel Management shall prescribe regulations to carry out the purposes of this section.

COMPENSATION OF INDIVIDUALS IN THE UNIFORMED SERVICES

SEC. 1204. [22 U.S.C. 3644] (a) Except as provided in subsection (b) of this section, any individual who is serving in a position in the Commission and who is a member of a uniformed service shall continue to be paid basic pay by such uniformed service and shall not be paid by the Commission for the period of the service in the uniformed service involved.

(b) If the individual appointed as Administrator, Deputy Administrator, or Chief Engineer of the Commission is a member of a uniformed service, the amount of basic pay otherwise payable to the individual for service in that position shall be reduced, up to the amount of that basic pay, by the amount of the basic pay payable to the individual as a member of a uniformed service.

(c) The Commission shall annually pay to each uniformed service amounts sufficient to reimburse that uniformed service for any basic pay paid by that uniformed service to any member of that service during any period of service in the Commission by the member.

DEDUCTION FROM BASIC PAY OF AMOUNTS DUE FOR SUPPLIES OR SERVICES

SEC. 1205. [22 U.S.C. 3645] The Commission may deduct from the basic pay otherwise payable by the Commission to any officer or employee of the Commission any amount due from the officer or employee to the Commission or to any contractor of the Commission for transportation, board, supplies, or any other service. Any amount so deducted may be paid by the Commission to any contractor to whom it is due or may be credited by the Commission to any fund from which the Commission has expended such amount.

COST OF LIVING ALLOWANCE

SEC. 1206. [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

EDUCATIONAL TRAVEL BENEFITS

SEC. 1207. [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

PRIVILEGES AND IMMUNITIES OF CERTAIN EMPLOYEES

SEC. 1208. [22 U.S.C. 3648] The Secretary of Defense shall designate those officers and employees of the Commission and other individuals entitled to the privileges and immunities accorded under paragraph 3 or Article VIII of the Panama Canal Treaty of 1977. The Department of State shall furnish to the Republic of Panama a list of the names of such officers, employees, and other individuals and shall notify the Republic of Panama of any subsequent additions to or deletions from the list.

APPLICABILITY OF CERTAIN BENEFITS

SEC. 1209. [22 U.S.C. 3649] Chapter 81 of title 5, United States Code, relating to compensation for work injuries, chapters 83 and 84 of such title 5, relating to retirement, chapter 87 of such title 5, relating to life insurance, and chapter 89 of such title 5, relating to health insurance, are applicable to Commission employees, except any individual—

(1) who is not a citizen of the United States;

(2) whose initial appointment by the Commission occurs after October 1, 1979; and

(3) who is covered by the Social Security System of the Republic of Panama pursuant to any provision of the Panama Canal Treaty of 1977 and related agreements.

AIR TRANSPORTATION

SEC. 1210. [22 U.S.C. 3650]

(a) Notwithstanding any other provision of law (except subsection (b)), the Commission may contract with Panamanian carriers registered under the laws of the Republic of Panama to provide air transportation to officials and employees of the Commission who are citizens of the Republic of Panama.

(b) An official or employee of the Commission who is a citizen of the Republic of Panama may elect, for security or other reasons, to travel by an air carrier holding a certificate under section 41102 of title 49, United States Code.

Subchapter II—Wage and Employment Practices

DEFINITIONS

SEC. 1211. [22 U.S.C. 3651] As used in this subchapter—

(1) "agency" means—

(A) the Commission, and

(B) any other Executive agency or the Smithsonian Institution, to the extent of any election in effect under section 1212(b) of this Act;

(2) "position" means a civilian position in the Commission, or in any other agency if a substantial portion of the duties and responsibilities are performed in the Republic of Panama; and

(3) "employee" means an individual serving in a position.

PANAMA CANAL EMPLOYMENT SYSTEM; MERIT AND OTHER EMPLOYMENT REQUIREMENTS

SEC. 1212. [22 U.S.C. 3652] (a) The Commission shall establish a Panama Canal Employment System and prescribe the regulations necessary for its administration. The Panama Canal Employment System shall—

(1) be established in accordance with and be subject to the provisions of the Panama Canal Treaty of 1977 and related agreements, the provisions of this chapter, and any other applicable provision of law;

(2) be based on the consideration of the merit of each employee or candidate for employment and the qualifications and fitness of the employee to hold the position concerned;

(3) conform, to the extent practicable and consistent with the provisions of this Act, to the policies, principles, and standards applicable to the competitive service;

(4) in the case of employees who are citizens of the United States, provide for the appropriate interchange of those employees between positions under the Panama Canal Employment System and positions in the competitive service; and

(5) not be subject to the provisions of title 5, United States Code, unless specifically made applicable by this Act.

(b)(1) The head of any Executive agency (other than the Commission) and the Smithsonian Institution may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama.

(2) Any Executive agency (other than the Commission) and the Smithsonian Institution, to the extent of any election under paragraph (1), shall conduct its employment and pay practices relating to employees in accordance with the Panama Canal Employment System.

(3) Notwithstanding any other provision of this Act, the Panama Canal Act Amendments of 1996 (subtitle B of title XXXV of Public Law 104–201; 110 Stat. 2860), or the Panama Canal Transition Facilitation Act of 1997 (subtitle B of title XXXV of Public Law 105–85; 110 Stat. 2062), or the Panama Canal Commission Authorization Act for Fiscal Year 1999, this subchapter, as in effect on September 22, 1996, shall continue to apply to an Executive agency or the Smithsonian Institution to the extent of an election under paragraph (1) by the head of the agency or the Institution, respectively.

(c) The Commission may exclude any employee or position from coverage under any provision of this subchapter, other than the interchange rights extended under subsection (a)(4).

EMPLOYMENT STANDARDS

SEC. 1213. [22 U.S.C. 3653] The Commission shall establish written standards for—

(1) determining the qualifications and fitness of employees and of candidates for employment in positions; and

(2) selecting individuals for appointment, promotion, or transfer to positions.

The standards shall conform to the provisions of this subchapter, and regulations prescribed thereunder, and the Panama Canal Employment System.

[Sec. 1214. Repealed by section 3532 of Public Law 104–201 (110 Stat. 2863)]

[Sec. 1215. Repealed by section 3523(a)(1) of Public Law 105–85 (111 Stat. 2064)]

UNIFORM APPLICATION OF STANDARDS AND RATES

SEC. 1216. [22 U.S.C. 3656] The standards established pursuant to section 1213 of this Act and the rates of basic pay established pursuant to section 1202 of the Act shall be applied without regard to whether the employee or individual concerned is a citizen of the United States or a citizen of the Republic of Panama.

RECRUITMENT AND RETENTION REMUNERATION

SEC. 1217. [22 U.S.C. 3657] (a) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(b) Any employee described in more than one paragraph of subsection (a) of this section may qualify for a recruitment or retention differential under only one of those paragraphs.

(c)(1) The Commission may pay a recruitment bonus to an individual who is newly appointed to a position with the Commission, or a relocation bonus to an employee of the Commission who must relocate to accept a position, if the Commission determines that the Commission would be likely, in the absence of such a bonus, to have difficulty in filling the position.

(2) A recruitment or relocation bonus may be paid to an employee under this subsection only if the employee enters into an agreement with the Commission to complete a period of employment established in the agreement. If the employee voluntarily fails to complete such period of employment or is separated from service in such employment as a result of an adverse action before the completion of such period, the employee shall repay the entire amount of the bonus.

(3) A recruitment or relocation bonus under this subsection may be paid as a lump sum. A bonus under this subsection may not be considered to be part of the basic pay of an employee.

(d)(1) The Commission may pay a retention bonus to an employee of the Commission if the Commission determines that—

(A) the employee has unusually high or unique qualifications and those qualifications make it essential for the Commission to retain the employee for a period specified by the Commission ending not later than the Canal Transfer Date, or the Commission otherwise has a special need for the services of the employee making it essential for the Commission to retain the employee for a period specified by the Commission ending not later than the Canal Transfer Date; and

(B) the employee would be likely to leave employment with the Commission before the end of that period if the retention bonus is not paid.

(2) A retention bonus under this subsection—

(A) shall be in a fixed amount;

(B) shall be paid on a pro rata basis (over the period specified by the Commission as essential for the retention of the employee), with such payments to be made at the same time and in the same manner as basic pay; and

(C) may not be considered to be part of the basic pay of an employee.

(3) A decision by the Commission to exercise or to not exercise the authority to pay a bonus under this subsection shall not be subject to review under any statutory procedure or any agency or negotiated grievance procedure except under any of the laws referred to in section 2302(d) of title 5, United States Code.

(e) Additional compensation provided under this section may not exceed 25 percent of the rate of basic pay of the individual to whom the compensation is paid.

QUARTERS ALLOWANCE

SEC. 1217a. [22 U.S.C. 3657a] (a) Notwithstanding paragraphs (2) and (3) of section 1211 of this Act, as used in this section—

(1) "position" means a civilian position; and

(2) "employee" means an individual serving in a position in the Department of Defense whose permanent duty station is in the area which, before October 1, 1979, was known as the Canal Zone.

(b) Under regulations prescribed by or under authority of the President, the Department of Defense may grant a quarters allowance in the case of—

(1) any employee who is a citizen of the United States and who, before October 1, 1979, was employed by the Panama Canal Company, the Canal Zone Government, or any other agency, in the area then known as the Canal Zone; and

(2) any other employee who is a citizen of the United States and who (before, on, or after the effective date of this section) is or was recruited within the United States;

for whom adequate Government owned or leased quarters are not made available.

(c) The amount of any quarters allowance granted to an employee under this section shall be determined in accordance with the regulations prescribed under subsection (b) of this section, except that such allowance for any period may not exceed the amount, if any, by which—

(1) the lesser of—

(A) the actual expenses for rent and utilities incurred by the employee during such period while occupying quarters other than Government owned or leased quarters; or

(B) the maximum amount which would be authorized for such employee with respect to such period under the Department of State Standardized Regulations (Government Civilians, Foreign Areas) if such employee were covered by those regulations;

exceeds

(2) the estimated total cost of rent and utilities which the employee would have been charged if Government owned or leased quarters had been provided on a rental basis during such period.

(d) The provisions of this section shall apply without regard to whether any election by the Department of Defense under section 1212(b) of this Act is then in effect.

BENEFITS BASED ON BASIC PAY

SEC. 1218. [22 U.S.C. 3658] For the purposes of determining—

(1) amounts of compensation for disability or death under chapter 81 of title 5, United States Code, relating to compensation for work injuries;

(2) benefits under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, relating to retirement;

(3) amounts of insurance under chapter 87 of title 5, United States Code, relating to life insurance;

(4) amounts of overtime pay or other premium pay;
(5) annual leave benefits; and
(6) any other benefits related to basic pay;

the basic pay of each employee shall include the rate of basic pay established for his position under section 1202 of this Act plus the amount of any additional compensation provided under section 1217(a) of this Act.

[Sec. 1219. Repealed by section 3523(a)(2) of Public Law 105–85 (111 Stat. 2064)]

REVIEW AND ADJUSTMENT OF CLASSIFICATIONS, GRADES, AND PAY LEVEL

SEC. 1220. [22 U.S.C. 3660] An employee may request at any time that the employee's agency—

(1) review the classification of the employee's position or the grade or pay level for the employee's position, or both; and
(2) revise or adjust that classification, grade or pay level, or both, as the case may be.

The request for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established appeals procedures of the agency.

PANAMA CANAL BOARD OF APPEALS; DUTIES

SEC. 1221. [22 U.S.C. 3661] (a) Subject to the provisions of this chapter, the Commission shall prescribe regulations establishing a Panama Canal Board of Appeals. The regulations shall provide for the number of members of the Board and their appointment, compensation, and terms of office, the selection of a Chairman of the Board, the appointment and compensation of the Board's employees, and other appropriate matters relating to the Board.

(b) The Board shall review and determine the appeals of employees in accordance with section 1222 of this Act. The decisions of the Board shall conform to the provisions of this subchapter.

APPEALS TO BOARD; PROCEDURES; FINALITY OF DECISIONS

SEC. 1222. [22 U.S.C. 3662] (a) An employee may appeal to the Panama Canal Board of Appeals from an adverse determination made by an agency under section 1220 of this Act. The appeal shall be made in writing within a reasonable time (as specified in regulations prescribed by, or under the authority of, the Commission) after the date of the transmittal by the agency to the employee of written notice of the adverse determination.

(b) The Board may authorize, in connection with an appeal pursuant to subsection (a) of this section, a personal appearance before the Board by the employee, or by a representative of the employee designated for that purpose.

(c) After investigation and consideration of the evidence submitted, the Board shall—

(1) prepare a written decision on the appeal;
(2) transmit its decision to the agency concerned; and

(3) transmit copies of the decision to the employee concerned or to the designated representative.

(d) The decision of the Board on any question or other matter relating to an appeal is final and conclusive. The agency concerned shall take action in accordance with the decision of the Board.

[Section 1223 repealed by Pub. Law 105–261, § 3508, Oct. 16, 1998, 112 Stat. 2269]

APPLICABILITY OF TITLE 5, UNITED STATES CODE

SEC. 1224. [22 U.S.C. 3664] The following provisions of title 5, United States Code, apply to the Panama Canal Commission:

(1) Part I of title 5 (relating to agencies generally).

(2) Chapter 21 (relating to employee definitions).

(3) Section 2302(b)(8) (relating to whistleblower protection) and all provisions of title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

(4) All provisions relating to preference eligibles.

(5) Section 5514 (relating to offset from salary).

(6) Section 5520a (relating to garnishments).

(7) Sections 5531–5535 (relating to dual pay and employment).

(8) Subchapter VI of chapter 55 (relating to accumulated and accrued leave).

(9) Subchapter IX of chapter 55 (relating to severance and back pay).

(10) Chapter 59 (relating to allowances).

(11) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999. Repealed paragraph related to Chapter 63 (leave for CONUS employees)].

(12) Section 6323 (relating to military leave; Reserves and National Guardsmen).

(13) Chapter 71 (relating to labor relations).

(14) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively) and all provisions of title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

(15) Chapter 81 (relating to compensation for work injuries).

(16) Chapters 83 and 84 (relating to retirement).

(17) Chapter 85 (relating to unemployment compensation).

(18) Chapter 87 (relating to life insurance).

(19) Chapter 89 (relating to health insurance).

[Sec. 1225. Repealed by section 3523(a)(3) of Public Law 105–85 (111 Stat. 2065)]

Subchapter III—Conditions of Employment and Placement

TRANSFERRED OR REEMPLOYED EMPLOYEES

SEC. 1231. [22 U.S.C. 3671] (a)(1) With respect to any individual employed in the Panama Canal Company or the Canal Zone Government—

(A) who is transferred—

(i) to a position in the Commission; or

(ii) to a position in an Executive agency or in the Smithsonian Institution the permanent duty station of which is in the Republic of Panama (including the area known before October 1, 1979, as the Canal Zone); or

(B) who is separated by reason of a reduction in force on September 30, 1979, and is appointed to a position in the Commission before April 1, 1980;

the terms and conditions of employment set forth in paragraph (2) of this subsection shall be generally no less favorable, on or after the date of the transfer referred to in subparagraph (A) of this paragraph or the date of the appointment referred to in subparagraph (B) of this paragraph as the case may be, than the terms and conditions of employment with the Panama Canal Company and Canal Zone Government on September 30, 1979, or, in the case of a transfer described in subparagraph (A)(ii) of this paragraph which takes place before that date, on the date of the transfer.

(2) The terms and conditions of employment referred to in paragraph (1) of this subsection are the following:

(A) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(B) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(C) premium pay and night differential;

(D) reinstatement and restoration rights;

(E) injury and death compensation benefits;

(F) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(G) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(H) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(I) reduction-in-force rights;

(J) an employee grievance system, and the right to appeal adverse and disciplinary actions and positions classification actions;

(K) veterans' preference eligibility;

(L) holidays;

(M) saved pay provisions; and

(N) severance pay benefits.

(b) Any individual described in subsection (a)(1)(B) of this section who would have met the service requirement for early retirement benefits under section 8336(i) or 8339(d)(2) of title 5, United States Code (as amended by sections 1241(a) and 1242 of this Act, respectively), but for a break in service of more than 3 days immediately after September 30, 1979, shall be considered to meet that requirement. Any break in service by any such individual for purposes of section 8332 of such title 5 during the period beginning September 30, 1979, and ending on the date of the appointment referred to in such subsection (a)(1)(B) shall be considered a period of creditable service under such section 8332 for such individual, except that such period shall not be taken into account for purposes of determining average pay (as defined in section 8331(4) of such title 5) and no deduction, contribution, or deposit shall be required for that period under section 8334 of such title 5.

(c)(1) Section 5(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 903(c)) shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School System and the permanent duty station of which is in the Republic of Panama, until the rates of basic compensation established under section 5(c) of such Act equal or exceed the rates of basic compensation then in effect for teachers who were so transferred.

(2) Section 6(a)(2) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 904(a)(2)) shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School System and the permanent duty station of which is in the Republic of Panama.

(3)(A) The head of a department or agency of the United States may grant a sabbatical to any teacher to whom paragraph (1) of this subsection applies for not to exceed 11 months in order to permit the teacher to engage in study or uncompensated work experience which is in the United States and which will contribute to the teacher's development and effectiveness. Basic compensation shall be paid to teachers on sabbatical under this section in the same manner and to the same extent as basic compensation would have been paid to teachers on sabbatical while employed in the Canal Zone Government school system on September 30, 1979. A sabbatical shall not result in a loss of, or reduction in, leave to which the teacher is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the department or agency may authorize in accordance with chapter 57 of title 5, United States Code, such travel expenses (including per diem allowance) as the head of the department or agency may determine to be essential for the study or experience.

(B) A sabbatical under this paragraph may not be granted to any teacher—

(i) more than once in any 10-year period;

(ii) unless the teacher has completed 7 years of service as a teacher; and

(iii) if the teacher is eligible for voluntary retirement with a right to an immediate annuity.

(C)(i) Any teacher in a department or agency of the United States may be granted a sabbatical under this paragraph only if the teacher agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of two consecutive years.

(ii) Each agreement required under clause (i) of this subparagraph shall provide that in the event the teacher fails to carry out the agreement (except for good and sufficient reason as determined by the head of the department or agency that granted the sabbatical), the teacher shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d) [Amended sections 5595(a)(2)(iii), 5724a(a) (3) and (4), and 8102(b) of title 5, United States Code.]

PLACEMENT

SEC. 1232. [22 U.S.C. 3672] (a) Any citizen of the United States—

(1) who, on March 31, 1979, was an employee of the Panama Canal Company or the Canal Zone Government;

(2) who separates or is scheduled to separate on or after such date for any reason other than misconduct or delinquency; and

(3) who is not placed in another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(b) Any citizen of the United States—

(1) who, on March 31, 1979, was employed in the Canal Zone as an employee of an Executive agency (other than the Panama Canal Company or the Canal Zone Government) or the Smithsonian Institution;

(2) whose position is eliminated as the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; and

(3) who is not appointed to another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(c) The Office of Personnel Management shall establish and administer a Government-wide placement program for all eligible employees who request appointment to positions under this section.

(d) The provisions of this section shall take effect on the date of the enactment of this Act.

TRANSITION SEPARATION INCENTIVE PAYMENTS

SEC. 1233. [22 U.S.C. 3673] (a) In applying to the Commission and employees of the Commission the provisions of section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of division A of Public Law 104–208; 110 Stat. 3009–383), relating to voluntary separation incentives for employees of certain Federal agencies (in this section referred to as "section 663")—

(1) the term "employee" shall mean an employee of the Commission who has served in the Republic of Panama in a position with the Commission for a continuous period of at least three years immediately before the employee's separation under an appointment without time limitation and who is covered under the Civil Service Retirement System or the Federal Employees' Retirement System under subchapter III of chapter 83 or chapter 84, respectively, of title 5, United States Code, other than—

(A) an employee described in any of subparagraphs (A) through (F) of subsection (a)(2) of section 663; or

(B) an employee of the Commission who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 1217(c) of this Act or who, within the 12-month period preceding the date of separation, received a retention bonus under section 1217(d) of this Act;

(2) the strategic plan under subsection (b) of section 663 shall include (in lieu of the matter specified in subsection (b)(2) of that section)—

(A) the positions to be affected, identified by occupational category and grade level;

(B) the number and amounts of separation incentive payments to be offered; and

(C) a description of how such incentive payments will facilitate the successful transfer of the Panama Canal to the Republic of Panama;

(3) a separation incentive payment under section 663 may be paid to a Commission employee only to the extent necessary to facilitate the successful transfer of the Panama Canal by the United States of America to the Republic of Panama as required by the Panama Canal Treaty of 1977;

(4) such a payment—

(A) may be in an amount determined by the Commission not to exceed $25,000; and

(B) may be made (notwithstanding the limitation specified in subsection (c)(2)(D) of section 663) in the case of an eligible employee who voluntarily separates (whether by retirement or resignation) during the 90-day period beginning on the date of the enactment of this section or during the period beginning on October 1, 1998, and ending on December 31, 1998;

(5) in the case of not more than 15 employees who (as determined by the Commission) are unwilling to work for the Panama Canal Authority after the Canal Transfer Date and

who occupy critical positions for which (as determined by the Commission) at least two years of experience is necessary to ensure that seasoned managers are in place on and after the Canal Transfer Date, such a payment (notwithstanding paragraph (4))—

(A) may be in an amount determined by the Commission not to exceed 50 percent of the basic pay of the employee; and

(B) may be made (notwithstanding the limitation specified in subsection (c)(2)(D) of section 663) in the case of such an employee who voluntarily separates (whether by retirement or resignation) during the 90-day period beginning on the date of the enactment of this section; and

(6) the provisions of subsection (f) of section 663 shall not apply.

(b) A decision by the Commission to exercise or to not exercise the authority to pay a transition separation incentive under this section shall not be subject to review under any statutory procedure or any agency or negotiated grievance procedure except under any of the laws referred to in section 2302(d) of title 5, United States Code.

Subchapter IV—Retirement

EARLY RETIREMENT ELIGIBILITY

SEC. 1241.[1] * * *

EARLY RETIREMENT COMPUTATION

SEC. 1242.[2] * * *

RETIREMENT UNDER SPECIAL TREATY PROVISIONS

SEC. 1243. [22 U.S.C. 3681] (a)(1) Subject to subsection (b) of this section, and under such regulations as the President may prescribe, the Secretary of the Treasury shall pay to the Social Security System of the Republic of Panama, out of funds deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund under section 8334(a)(2) of title 5, United States Code, such sums of money as may be necessary to aid in the purchase of a retirement equity in such System for each individual who—

(A) meets the requirements of paragraph (2) of this subsection;

(B) is separated from employment in the Panama Canal Company, the Canal Zone Government, or the Commission by reason of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; and

(C) becomes employed in a position covered by the Social Security System of the Republic of Panama through the trans-

[1] Sec. 1241 amended section 8336 of title 5, United States Code, to clarify eligibility requirements for early retirement of Panama Canal Company and Commission employees.

[2] Section 1242 amended section 8339(d) of title 5, United States Code, to clarify early retirement computation for Panama Canal Company and Commission employees.

fer of a function or activity to the Republic of Panama from the United States or through a job placement assistance program.

(2) This subsection applies with respect to any individual only if the individual—

(A) has been credited with at least 5 years of civilian service under section 8332 of title 5, United States Code, relating to creditable service for purposes of civil service retirement;

(B) is not eligible for an immediate retirement annuity under chapter 83 of title 5, United States Code, relating to civil service retirement, and elects not to receive a deferred annuity under that chapter based on any portion of that service; and

(C) elects to withdraw from the Civil Service Retirement and Disability Fund the individual's entire lump-sum credit (as defined in section 8331(8) of title 5, United States Code) and to transfer that amount to the Social Security System of the Republic of Panama pursuant to the special regime referred to in paragraph 3 of Article VIII of the Agreement in implementation of Article III of the Panama Canal Treaty of 1977.

(b) The amount paid to the Social Security System of the Republic of Panama with respect to any individual under subsection (a) of this section shall not exceed the individual's entire lump-sum credit (as so defined).

(c)(1) Pursuant to paragraph 2(b) of Annex C to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, the President, or the President's designee, shall purchase from a source determined by the President to be appropriate, in accordance with such regulations as the President or the President's designee may prescribe and to such extent or in such amounts as may be provided in advance in appropriation Acts, a nontransferable deferred annuity for the benefit of each employee of an agency or instrumentality of the Government of the United States in the Republic of Panama—

(A) who is not a citizen of the United States;

(B) who was employed on October 1, 1979, and during any period before that date by an agency or instrumentality of the Government of the United States at any permanent duty station in the Republic of Panama (including, with respect to employment before that date, the area then known as the Canal Zone);

(C) who, for any period of service with such agency or instrumentality before October 1, 1979, at any such permanent duty station was not covered, by reason of that service, by the United States Civil Service Retirement System or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama; and

(D) who on October 1, 1979, is under a Federal retirement system and, on or before that date, has accrued in one or more agencies or instrumentalities of the United States a total of 5 years or more of service which—

(i) is creditable toward any Federal retirement system as in effect on October 1, 1979;

(ii) would have been creditable toward any such retirement system if the retirement system were in effect at the time of the service accrued by the employee; or

(iii) consists of any combination of service described in clauses (i) and (ii) of this subparagraph.

(2) The retirement annuity referred to in paragraph (1) of this subsection with respect to any employee will cover retroactively, from October 1, 1979, all periods of service, described in subparagraph (D) of that paragraph, by that employee at any permanent duty station in the Republic of Panama (including the area known before that date as the Canal Zone) in agencies and instrumentalities of the Government of the United States during which that employee was not covered by the United States Civil Service Retirement System or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama.

OBLIGATION OF COMMISSION FOR UNFUNDED LIABILITY

SEC. 1244.[1] * * *

ADMINISTRATION OF CERTAIN DISABILITY BENEFITS

SEC. 1245. [22 U.S.C. 3682] (a)(1) The Commission, or any other United States Government agency or private entity acting pursuant to an agreement with the Commission, under the Act entitled "An Act authorizing cash relief for certain employees of the Panama Canal not coming within the provisions of the Canal Zone Retirement Act", approved July 8, 1937 (50 Stat. 478; 68 Stat. 17), may continue the payments of cash relief to those individual former employees of the Canal Zone Government or Panama Canal Company or their predecessor agencies not coming within the scope of the former Canal Zone Retirement Act whose services were terminated prior to October 5, 1958, because of unfitness for further useful service by reason of mental or physical disability resulting from age or disease.

(2) Subject to subsection (b), cash relief under this subsection may not exceed $1.50 per month for each year of service of the employees so furnished relief, with a maximum of $45 per month, plus the amount of any cost-of-living increases in such cash relief granted before October 1, 1979, pursuant to section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), nor be paid to any employee who, at the time of termination for disability prior to October 5, 1958, had less than 10 years' service with the Canal Zone Government, the Panama Canal Company, or their predecessor agencies on the Isthmus of Panama.

(b) An additional amount of $20 per month shall be paid to each person who receives payment of cash relief under subsection (a) of this section and shall be allowed without regard to the limitations contained therein.

(c) Each cash relief payment made pursuant to this section shall be increased on the same effective date and by the same percent, adjusted to the nearest dollar, as civil service retirement an-

[1] Section 1244 amended section 8384 of title 5, United States Code, by adding at the end a new subsection (i).

nuities are increased under the cost-of-living adjustment provisions of section 8340(b) of title 5, United States Code. Such increase shall apply only to cash relief payments made after October 1, 1979, as increased by annuity increases made after that date under such section 8340(b).

(d) The Commission may pay cash relief to the widow of any former employee of the Canal Zone Government or the Panama Canal Company who, until the time of his death, receives or has received cash relief under subsection (a) of this section, under section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), or under the Act of July 8, 1937, referred to in such subsection (a). The term "widow" as used in this subsection includes only the following:

(1) a woman legally married to such employee at the time of his termination for disability and at his death;

(2) a woman who, although not legally married to such former employee at the time of his termination, had resided continuously with him for at least five years immediately preceding the employee's termination under such circumstances as would at common law make the relationship a valid marriage and who continued to reside with him until his death; and

(3) a woman who has not remarried or assumed a common-law relationship with any other person.

Cash relief granted to such a widow shall not at any time exceed 50 percent of the rate at which cash relief, inclusive of any additional payment under subsection (b) of this section, would be payable to the former employee were he then alive.

(e) Subchapter III of chapter 83 of title 5, United States Code, applies with respect to those individuals who were in the service of the Canal Zone Government or the Panama Canal Company on October 5, 1958, and who, except for the operation of section 13(a)(1) of the Act entitled "An Act to implement item 1 of a Memorandum of Understanding attached to the treaty of January 25, 1955, entered into by the Government of the United States of America and the Government of the Republic of Panama with respect to wage and employment practices of the Government of the United States of America in the Canal Zone", approved July 25, 1958 (72 Stat. 405), would have been within the classes of individuals subject to the Act of July 8, 1937, referred to in subsection (a) of this section.

[SEC. 1246 repealed by section 3546(a)(6) of Public Law 104–201 (110 Stat. 2868)]

Subchapter V—Leave

[SEC. 1251 repealed by section 3546(a)(7) of Public Law 104–201 (110 Stat. 2868)]

Subchapter VI—Application to Related Personnel

LAW ENFORCEMENT; CANAL ZONE CIVILIAN PERSONNEL POLICY COORDINATION BOARD; RELATED EMPLOYEES

SEC. 1261. [22 U.S.C. 3691] (a) For the purposes of sections 1206, 1231, 1232, 1241, and 1242 of this Act, including any amend-

ment made by those sections, the United States Attorney for the District of the Canal Zone and the Assistant United States Attorneys and their clerical assistants, and the United States Marshal for the District of the Canal Zone and his deputies and clerical assistants shall be considered employees of the Commission.

(b) For the purposes of this Act, including any amendment made by this Act, the Executive Director of the Canal Zone Civilian Personnel Policy Coordinating Board, the Manager, Central Examining Office, and their staffs shall be considered to have been employees of the Panama Canal Company with respect to service in those positions before October 1, 1979, and as employees of the Commission with respect to service in those positions on or after that date.

(c) The provisions of this section shall take effect on the date of the enactment of this Act.

Subchapter VII—Labor-Management Relations

LABOR-MANAGEMENT RELATIONS

SEC. 1271. [22 U.S.C. 3701] (a) Nothing in this Act shall be construed to affect the applicability of chapter 71 of title 5, United States Code, relating to labor-management and employee relations, with respect to the Commission or the operations of any other Executive agency conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, except that in applying those provisions—

(1) the definition of "employee" shall be applied without regard to clause (i) of section 7103(a)(2) of such title 5 which relates to nationality and citizenship;

(2) a unit shall be considered to be appropriate notwithstanding the fact that it includes any supervisor if that supervisor's position (or type of position) was, before October 1, 1979, represented before the Panama Canal Company by a labor organization that included employees who were not supervisors; and

(3) any negotiated grievance procedures under section 7121 of title 5, United States Code, including any provisions relating to binding arbitration, shall, with respect to any personnel action to which subchapter II of chapter 75 of such title applies (as determined under section 7512 of such title), be available to the same extent and in the same manner as if employees of the Panama Canal Commission were not excluded from such subchapter under section 7511(b)(8) of such title.

(b) Labor-management and employee relations of the Commission, other Executive agencies, and the Smithsonian Institution, their employees, and organizations of those employees, in connection with operations conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, shall be governed and regulated solely by the applicable laws, rules, and regulations of the United States.

(c)(1) This subsection applies to any matter that becomes the subject of collective bargaining between the Commission and the exclusive representative for any bargaining unit of employees of the

Commission during the period beginning on the date of the enactment of this subsection and ending on the Canal Transfer Date.

(2)(A) The resolution of impasses resulting from collective bargaining between the Commission and any such exclusive representative during that period shall be conducted in accordance with such procedures as may be mutually agreed upon between the Commission and the exclusive representative (without regard to any otherwise applicable provisions of chapter 71 of title 5, United States Code). Such mutually agreed upon procedures shall become effective upon transmittal by the Chairman of the Supervisory Board of the Commission to the Congress of notice of the agreement to use those procedures and a description of those procedures.

(B) The Federal Services Impasses Panel shall not have jurisdiction to resolve any impasse between the Commission and any such exclusive representative in negotiations over a procedure for resolving impasses.

(3) If the Commission and such an exclusive representative do not reach an agreement concerning a procedure for resolving impasses with respect to a bargaining unit and transmit notice of the agreement under paragraph (2) on or before July 1, 1998, the following shall be the procedure by which collective bargaining impasses between the Commission and the exclusive representative for that bargaining unit shall be resolved:

(A) If bargaining efforts do not result in an agreement, either party may timely request the Federal Mediation and Conciliation Service to assist in achieving an agreement.

(B) If an agreement is not reached within 45 days after the date on which either party requests the assistance of the Federal Mediation and Conciliation Service in writing (or within such shorter period as may be mutually agreed upon by the parties), the parties shall be considered to be at an impasse and the Federal Mediation and Conciliation Service shall immediately notify the Federal Services Impasses Panel of the Federal Labor Relations Authority, which shall decide the impasse.

(C) If the Federal Services Impasses Panel fails to issue a decision within 90 days after the date on which notice under subparagraph (B) is received by the Panel (or within such shorter period as may be mutually agreed upon by the parties), the efforts of the Panel shall be terminated.

(D) In such a case, the Chairman of the Panel (or another member in the absence of the Chairman) shall immediately determine the matter by a drawing (conducted in such manner as the Chairman (or, in the absence of the Chairman, such other member) determines appropriate) between the last offer of the Commission and the last offer of the exclusive representative, with the offer chosen through such drawing becoming the binding resolution of the matter.

(4) In the case of a notice of agreement described in paragraph (2)(A) that is transmitted to the Congress as described in the second sentence of that paragraph after July 1, 1998, the impasse resolution procedures covered by that notice shall apply to any impasse between the Commission and the other party to the agree-

ment that is unresolved on the date on which that notice is transmitted to the Congress.

CHAPTER 3—FUNDS AND ACCOUNTS

Subchapter I—Funds

[SEC. 1301 repealed by section 3546(a)(8) of Public Law 104–201 (110 Stat. 2868)]

PANAMA CANAL REVOLVING FUND

SEC. 1302. [22 U.S.C. 3712] (a) There is established in the Treasury of the United States a revolving fund to be known as "Panama Canal Revolving Fund". The Panama Canal Revolving Fund shall, subject to subsection (b), be available to the Commission to carry out the purposes, functions, and powers authorized by this Act, including for the following purposes:

(1) The hire of passenger motor vehicles and aircraft.

(2) Uniforms or allowances therefor.

(3) Official receptions and representation expenses of the Board, the Secretary of the Commission, and the Administrator.

(4) The operation of guide services.

(5) A residence for the Administrator.

(6) Disbursements by the Administrator for employee and community projects.

(7) The procurement of expert and consultant services.

(8) Promotional activities, including the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, film, or other media presentation designed to promote the Panama Canal as a resource of the world shipping industry.

(9) The purchase and transportation to the Republic of Panama of passenger motor vehicles, including large, heavy-duty vehicles.

(10) Payment to the Panama Canal Authority, not later than the Canal Transfer Date, of such amount as is computed by the Commission to be the future amount of severance pay to be paid by the Panama Canal Authority to employees whose employment with the Authority is terminated, to the extent that such severance pay is attributable to periods of service performed with the Commission before the Canal Transfer Date (and assuming for purposes of such computation that the Panama Canal Authority, in paying severance pay to terminated employees, will provide for crediting of periods of service with the Commission).

(b)(1) There shall be deposited in the Panama Canal Revolving Fund, on a continuing basis, toll receipts (other than amounts of toll receipts deposited into the Panama Canal Commission Dissolution Fund under section 1305) and all other receipts of the Commission. Except as provided in section 1303, no funds may be obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law.

(2) No funds may be authorized for the use of the Commission, or obligated or expended by the Commission in any fiscal year; in excess of—

(A) the amount of revenues deposited in the Panama Canal Revolving Fund and the Panama Canal Commission Dissolution Fund during such fiscal year; plus

(B) the amount of revenues deposited in the Panama Canal Revolving Fund before such fiscal year and remaining unobligated at the beginning of such fiscal year; plus

(C) the $100,000,000 borrowing authority provided for in section 1304 of this Act.

Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall report to the Congress the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year.

(c) With the approval of the Secretary of the Treasury, the Commission may deposit amounts in the Panama Canal Revolving Fund in any Federal Reserve bank, any depositary for public funds, or such other place and in such manner as the Commission and the Secretary may agree.

(d)(1) It is the sense of the Congress that the additional costs resulting from the implementation of the Panama Canal Treaty of 1977 and related agreements should be kept to the absolute minimum level. To this end, the Congress declares appropriated costs of implementation to be borne by the taxpayers over the life of such Treaty should be kept to a level no greater than the March 1979 estimate of those costs ($870,700,000) presented to the Congress by the executive branch during consideration of this Act by the Congress, less personnel retirement costs of $205,000,000, which were subtracted and charged to tolls, therefore resulting in net taxpayer cost of approximately $665,700,000, plus appropriate adjustments for inflation.

(2) It is further the sense of the Congress that the actual costs of implementation be consistent with the obligations of the United States to operate the Panama Canal safely and efficiently and keep it secure.

EMERGENCY AUTHORITY

SEC. 1303. [22 U.S.C. 3713] If authorizing legislation described in section section 1302(b)(1) has not been enacted for a fiscal year, then the Commission may withdraw funds from the Panama Canal Revolving Fund in order to defray emergency expenses and to ensure the continuous, efficient, and safe operation of the Panama Canal, including expenses for capital projects. The authority of this section may be exercised only until authorizing legislation described in section section 1302(b)(1) is enacted, or for a period of 24 months after the end of the fiscal year for which such authorizing legislation was last enacted, whichever occurs first. Within 60 days after the end of any calendar quarter in which expenditures are made under this section, the Commission shall report such expenditures to the appropriate committees of the Congress.

BORROWING AUTHORITY

SEC. 1304. [22 U.S.C. 3714] (a) The Panama Canal Commission may borrow from Treasury, for any of the purposes of the commission, not more than $100,000,000 outstanding at any time. For this purpose, the Commission may issue to the Secretary of the Treasury its notes or other obligations—

(1) which shall have maturities (of not later than December 31, 1999) agreed upon by the Commission and the Secretary of the Treasury, and

(2) which may be redeemable at the option of the Commission before maturity.

(b) Amounts borrowed under this section shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977.

(c) Amounts borrowed under this section shall increase the investment of the United States in the Panama Canal, and repayment of such amount shall decrease such investment.

(d) The Commission shall report to the Congress and to the Office of Management and Budget on each exercise of borrowing authority under this section.

DISSOLUTION OF COMMISSION

SEC. 1305. [22 U.S.C. 3714a] (a)(1) The Commission shall conduct a study of—

(A) the costs associated with the dissolution of the Commission, including the composition, location, and costs of the office authorized to be established under subsection (b); and

(B) costs and liabilities incurred or administered by the Commission that will not be paid before the date of that dissolution.

(2) The Commission shall submit to the Congress, by not later than September 30, 1996, a report on the findings and conclusions of the study under this subsection. The report shall include an estimate of the period of time which may be required to close out the affairs of the Commission after the termination of the Panama Canal Treaty of 1977.

(b) The Commission shall during fiscal year 1998 establish an office to close out the affairs of the Commission that are still pending after the termination of the Panama Canal Treaty of 1977.

(c)(1) There is established in the Treasury of the United States a fund to be known as the "Panama Canal Commission Dissolution Fund" (hereinafter in this section referred to as the "Fund"). The Fund shall be managed by the Commission until the termination of the Panama Canal Treaty of 1977 and by the office established under subsection (b) thereafter.

(2)(A) Subject to paragraph (5), the Fund shall be available after September 30, 1998, to pay—

(i) the costs of operating the office established under subsection (b); and

(ii) the costs and liabilities associated with dissolution of the Commission, including such costs incurred or identified after the termination of the Panama Canal Treaty of 1977.

(B) Payments from the Fund made during the period beginning on October 1, 1998, and ending with the termination of the Panama Canal Treaty of 1977 shall be subject to the approval of the Board provided for in section 1102.

(3) The Fund shall consist of—

(A) such amounts as may be deposited into the Fund by the Commission, from amounts collected as toll receipts, to pay the costs described in paragraph (2); and

(B) amounts credited to the Fund under paragraph (4).

(4)(A) The Secretary of the Treasury shall invest excess amounts in the Fund in public debt securities with maturities suitable to the needs of the Fund, as determined by the manager of the Fund.

(B) Securities invested under subparagraph (A) shall bear 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 maturity.

(C) Interest earned on securities invested under subparagraph (A) shall be credited to and form part of the Fund.

(5)(A) Amounts in the Fund may not be obligated or expended in any fiscal year unless the obligation or expenditure is specifically authorized by law.

(B) The office established by subsection (b) is authorized to expend or obligate funds from the Fund for the purposes enumerated in clauses (i) and (ii) of paragraph (2)(A) until October 1, 2004.

(6) The Fund shall terminate on October 1, 2004. Amounts in the Fund on that date shall be deposited in the general fund of the Treasury of the United States.

PRINTING

SEC. 1306. [22 U.S.C. 3714b] (a) Sections 501 through 517 and 1101 through 1123 of title 44, United States Code, shall not apply to direct purchase by the Commission for its use of printing, binding, and blank-book work in the Republic of Panama when the Commission determines that such direct purchase is in the best interest of the Government.

(b) This section shall not affect the Commission's authority, under chapter 5 of title 44, United States Code, to operate a field printing plant.

Subchapter II—Accounting Policies and Audits

ACCOUNTING POLICIES

SEC. 1311. [22 U.S.C. 3721] (a) The Commission shall establish and maintain its accounts pursuant to chapter 91 of title 31, United States Code, and the provisions of this chapter. Such accounts shall specify all revenues received by the Commission, including tolls for the use of the Panama Canal, expenditures for capital replacement, expansion, and improvement, and all costs of maintenance and operation of the Panama Canal and of its complementary works, installations, and equipment, including depreciation, payments to the Republic of Panama under the Panama

Canal Treaty of 1977, and interest on the investment of the United States calculated in accordance with section 1603 of this Act.

(b) The Commission may issue regulations establishing the basis of accounting for the assets which are made available for the use of the Commission. Such regulations may provide for depreciation of the net replacement value of the assets which will ultimately require replacement to maintain the service capacity of the Panama Canal. Such regulations may also provide the depreciation of such assets be recorded ratably over their service lives.

[Sec. 1312 Repealed by section 2201(a) of Public Law 104–66 (109 Stat. 707)]

AUDITS

SEC. 1313. [22 U.S.C. 3723] (a) Notwithstanding any other provision of law, and subject to subsection (c), financial transactions of the Commission shall be audited by the Comptroller General of the United States (hereinafter in this Act referred to as the "Comptroller General"). In conducting any such audit, the appropriate representatives of the Comptroller General shall have access to all books, accounts, financial records, reports, files, and other papers, items, or property in use by the Commission and necessary to facilitate such audit, and such representative shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Any such audit shall first be conducted with respect to the fiscal year in which this Act becomes effective. An audit performed under this section is subject to the requirements of paragraphs (2), (3), and (5) of section 9105(a) of title 31, United States Code.

(b) Subject to subsection (c), the Comptroller General shall, not later than six months after the end of each fiscal year, submit to the Congress a report of the audit conducted pursuant to subsection (a) of this section with respect to such fiscal year. Such report shall set forth the scope of the audit and shall include—

(1) a statement of assets and liabilities, capital, and surplus or deficit, based on the accounts of the Commission established pursuant to this chapter.

(2) a statement of income and expenses,

(3) a statement of sources and application of funds,

(4) a statement listing all direct and indirect costs incurred by the United States in implementing the Panama Canal Treaty of 1977, including the cost of property transferred to the Republic of Panama during each fiscal year, and

(5) such comments and information as the Comptroller General considers necessary to keep the Congress informed of the operations and financial transactions of the Commission, together with such recommendations with respect to such operations and transactions as the Comptroller General considers advisable.

The report shall identify specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried out or made and has not been authorized by law. The

Comptroller General shall submit a copy of each such report to the President, the Secretary of the Treasury, and the Commission.

(c) At the discretion of the Board provided for in section 1102, the Commission may hire independent auditors to perform, in lieu of the Comptroller General, the audit and reporting functions prescribed in subsections (a) and (b).

(d) In addition to auditing the financial statements of the Commission, the Comptroller General (or the independent auditor if one is employed pursuant to subsection (c)) shall, in accordance with standards for an examination of a financial forecast established by the American Institute of Certified Public Accountants, examine and report on the Commission's financial forecast that it will be in a position to meet its financial liabilities on December 31, 1999.

Subchapter III—Interagency Accounts

INTERAGENCY SERVICES; REIMBURSEMENTS

SEC. 1321. [22 U.S.C. 3731] (a) The Commission shall reimburse the Employees' Compensation Fund, Bureau of Employee's Compensation, Department of Labor, for the benefit payments to the Commission's employees, and shall also reimburse other Government departments and agencies for payments of a similar nature made on its behalf.

(b) The Department of Defense shall reimburse the Commission for amounts expended by the Commission in maintaining defense facilities in standby condition for the Department of Defense.

(c) Notwithstanding any other provision of law, funds appropriated (for any fiscal year beginning after September 30, 1979) to or for the use of the Department of Defense, or to any other department or agency of the United States as may be designated by the President to carry out the purposes of this subsection, shall be available for—

(1) conducting the educational and health care activities, including kindergartens and college, carried out by the Canal Zone Government and the Panama Canal Company before October 1, 1979, and

(2) providing the services related thereto to the categories of persons to which such services were provided before October 1, 1979.

Notwithstanding any other provision of law, the Department of Defense, or any department or agency designated by the President to provide health care services to those categories of persons referred to in this subsection, shall provide such services to such categories of persons on a basis no less favorable than that applied to its own employees and their dependents.

(d) Amounts expended for furnishing services referred to in subsection (c) of this section to persons eligible to receive them, less amounts payable by such persons, shall be fully reimbursable to the department or agency furnishing the services, except to the extent that such expenditures are the responsibility of that department or agency. The funds of the Commission shall be available for such reimbursements on behalf of—

(1) employees of the Commission, and

(2) other persons authorized to receive such services who are eligible to receive them pursuant to the Panama Canal Treaty of 1977 and related agreements.

The appropriations or funds of any other department or agency of the United States conducting operations in the Republic of Panama, including the Smithsonian Institution, shall be available for reimbursements on behalf of employees of such department or agency and their dependents.

(e) [Repealed by section 3507 of Public Law 105–261 (112 Stat. 2269) effective 11:59 p.m. (Eastern Standard Time), December 30, 1999.]

(f) For purposes of the reimbursement of the United States by the Republic of Panama for the salaries and other employment costs of employees of the Commission who are assigned to assist the Republic of Panama in the operation of activities which are transferred to that Government as a result of any provision of the Panama Canal Treaty of 1977 and related agreements which reimbursement is provided for in paragraph 8 of Article 10 of that Treaty, the Commission shall be deemed to be the United States of America.

(g) Notwithstanding any other provision of law, the President, through the appropriate department or agency of the United States, shall, until January 1, 2000, operate the educational institution known as the "Canal Zone College". Such institution shall continue to provide, insofar as practicable, the level of services which it offered immediately before the effective date of this Act.

(h) Except as expressly provided in this Act, funds available to the Panama Canal Commission may not be made available to any other agency as that term is defined in section 551 of title 5, United States Code, nor may funds be authorized or appropriated for any function other than Panama Canal Commission activities.

Subchapter IV—Postal Matters

POSTAL SERVICE

SEC. 1331. [22 U.S.C. 3741] (a) The Commission shall take possession of and administer the funds of the Canal Zone postal service and shall assume its obligations.

(b) Effective December 1, 1999, neither the Commission nor the United States Government shall be responsible for the distribution of any accumulated unpaid balances relating to Canal Zone postal-savings deposits, postal-savings certificates, and postal money orders.

(c) Mail addressed to the Canal Zone from or through the continental United States may be routed by the United States Postal Service to the military post offices of the United States Armed Forces in the Republic of Panama. Such military post offices shall provide the required directory services and shall accept such mail to the extent permitted under the Panama Canal Treaty of 1977 and related agreements. The Commission shall furnish personnel, records, and other services to such military post offices to assure wherever appropriate the distribution, rerouting, or return of such mail.

Subchapter V—Accounts With the Republic of Panama

PAYMENTS TO THE REPUBLIC OF PANAMA

SEC. 1341. [22 U.S.C. 3751] (a) The Commission shall pay to the Republic of Panama those payments required under paragraph 5 of Article III and paragraph 4 of Article XIII of the Panama Canal Treaty of 1977. Payments made under paragraph 5 of Article III of such Treaty shall be audited annually by the Comptroller General and any overpayment, as determined in accordance with Understanding (1) incorporated in the Resolution of Ratification of the Panama Canal Treaty (adopted by the United States Senate on April 18, 1978), for the service described in that paragraph which are provided shall be refunded by the Republic of Panama or set off against amounts payable by the United States to the Republic of Panama under paragraph 5 of Article III of the Panama Canal Treaty of 1977.

(b) In determining whether operating revenues exceed expenditures for the purpose of payments to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977, such operating revenues in a fiscal period shall be reduced by (1) all costs of such period as shown by the accounts established pursuant to section 1311 of this Act, and (2) the cumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of costs of the Panama Canal Commission over operating revenues.

(c) The President shall not accede to any interpretation of paragraph 1 of Article IX of the Panama Canal Treaty of 1977 which would permit the Republic of Panama to tax retroactively organizations and businesses operating, and citizens of the United States living, in the Canal Zone before the effective date of this Act.

(d) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 at the termination of such Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and nothing in such paragraph may be construed as obligating the United States to pay after the date of the termination of the Treaty any such unpaid balance which has accrued before such date.

(e) As provided in section 1602(b) of this Act, tolls shall not be prescribed at rates calculated to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977. Moreover, no payments may be made to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 unless unexpended funds are used to pay all costs of operation and maintenance of the canal, including but not limited to (1) operating expenses determined in accordance with generally accepted accounting principles, (2) payments to the Republic of Panama under paragraphs 4(a) and 4(b) of such Article XIII and under paragraph (5) of Article III of such Treaty, (3) amounts in excess of depreciation and amortization which are programmed for plant replacement, expansion, and improvements, (4) payments to the Treasury of the United States under section 1603 of this Act, (5) reimbursement to the Treasury of the United States

for costs incurred by other departments and agencies of the United States in providing educational, health, and other services to the Commission, its employees and their dependents, and other categories of persons in accordance with section 1321 of this Act, (6) any costs of Treaty implementation associated with the maintenance and operation of the Panama Canal, and (7) amounts programmed to meet working capital requirements.

(f) The prohibitions contained in this section and in sections 1302(b) and 1503 of this Act shall apply notwithstanding any other provisions of law authorizing transfers of funds between accounts, reprogramming of funds, use of funds for contingency purposes, or waivers of prohibitions.

(g) Notwithstanding any other provision of law, no reduction under any order issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 shall apply to the Commission if the implementation of such an order would result in a payment to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 and this section.

TRANSACTIONS WITH THE REPUBLIC OF PANAMA

SEC. 1342. [22 U.S.C. 3752] (a) The Commission may, on a reimbursable basis, provide to the Republic of Panama materials, supplies, equipment, work, or services, including water and electric power, requested by the Republic of Panama, at such rates as may be agreed upon by the Commission and the Republic of Panama. Payment for such materials, supplies, equipment, work, or services may be made by direct payment by the Republic of Panama to the Commission or by offset against amounts due the Republic of Panama by the United States.

(b) The Commission may provide office space, equipment, supplies, personnel, and other in-kind services to the Panama Canal Authority on a nonreimbursable basis.

(c) Any executive department or agency of the United States may, on a reimbursable basis, provide to the Panama Canal Authority materials, supplies, equipment, work, or services requested by the Panama Canal Authority, at such rates as may be agreed upon by that department or agency and the Panama Canal Authority.

DISASTER RELIEF

SEC. 1343. [22 U.S.C. 3753] If an emergency arises because of disaster or calamity by flood, hurricane, earthquake, fire, pestilence, or like cause, not foreseen or otherwise provided for, and occurring in the Republic of Panama in such circumstances as to constitute an actual or potential hazard to health, safety, security, or property in the areas and installations made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, the Commission may expend funds available to the Commission for such purpose, and utilize or furnish materials, supplies, equipment and services for relief, assistance, and protection.

CONGRESSIONAL RESTRAINTS ON PROPERTY TRANSFERS AND TAX EXPENDITURES

SEC. 1344. [22 U.S.C. 3754] (a) The Congress enacts this section in the exercise of its authority under Article IV, section 3, clause 2 of the Constitution of the United States to dispose of and make necessary rules and regulations with respect to property of the United States.

(b) Prior to the transfer of property of the United States located in the Republic of Panama to the Republic of Panama pursuant to section 1504 of this Act, the President shall formally advise the Government of Panama that—

(1) in fulfilling its obligations under the Panama Canal Treaty of 1977, the United States shall make no payments to the Republic of Panama derived from tax revenues of the United States;

(2) the United States retains full discretion and authority to determine whether and the extent to which tax revenues of the United States may be expended in exercising United States rights and carrying out United States responsibilities under the Panama Canal Treaty of 1977 and related agreements;

(3) no tax revenues of the United States shall be made available for obligations and expenditures after the effective date of this Act for purposes of implementing the Panama Canal Treaty of 1977 and related agreements, unless hereafter specifically approved by the Congress through the authorization and appropriation process;

(4) the total amount expended by the Commission from funds available to or for the use of the Commission shall not exceed the total amount deposited in the Panama Canal Revolving Fund; and

(5) the foregoing paragraphs of this subsection do not apply to expenditures made by the United States in fulfilling United States obligations to transfer the remains of our honored dead from Mount Hope Cemetery in the former Canal Zone to an appropriate and dignified place in accordance with Reservation 3 to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

CHAPTER 4—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

Subchapter I—General Provisions

SETTLEMENT OF CLAIMS GENERALLY

SEC. 1401. [22 U.S.C. 3761] (a) Subject to the provisions of this chapter, the Commission may adjust and pay claims for injury to, or loss of, property or for personal injury or death, arising from the operation of the Panama Canal or related facilities and appurtenances.

(b) The Commission may pay not more than $50,000 on any claim described in subsection (a).

(c) An award made to a claimant under this section shall be payable out of any moneys made available to the Commission. The acceptance by the claimant of the award shall be final and conclu-

sive on the claimant, and shall constitute a complete release by the claimant of his claim against the United States and against any employee of the United States acting in the course of his employment who is involved in the matter giving rise to the claim.

(d) Except as provided in section 1416 of this Act, no action for damages on claims cognizable under this chapter shall be against the United States or the Commission, and no such action shall lie against any officer or employee of the United States. Neither this section nor section 1416 of this Act shall preclude actions against officers or employees of the United States for injuries resulting from their acts outside the scope of their employment or not in the line of their duties, or from their acts committed with the intent to injure the person or property of another.

(e) The provisions of section 1346(b) of title 28, United States Code, and the provisions of chapter 171 of such title shall not apply to claims cognizable under this chapter.

Subchapter II—Vessel Damage

INJURIES IN LOCKS OF CANAL

SEC. 1411. [22 U.S.C. 3771] (a) Subject to section 1419(b) of this Act and to subsection (b) of this section, the Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels, which may arise by reason of their passage through the locks of the Panama Canal when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence to fault attributable to the vessel, master, crew, or passengers. Damages may not be allowed and paid for injuries to any protrusion beyond any portion of the hull of a vessel, whether it is permanent or temporary in character. A vessel is considered to be passing through the locks of the Canal, under the control of officers or employees of the United States, from the time the first towing line is made fast on board before entrance into the locks and until the towing lines are cast off upon, or immediately prior to, departure from the lock chamber. No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within one year after the date of the injury or by November 18, 1998, whichever is later.

(b)(1) With respect to a claim under subsection (a) for damages for injuries to a vessel or its cargo, if, at the time the injuries were incurred, the navigation or movement of the vessel was not under the control of a Panama Canal pilot, the Commission may pay not more than $50,000 on the claim, unless the injuries were caused by another vessel under the control of a Panama Canal pilot.

(2) The provisions of subsections (c) through (e) of section 1401 of this Act shall apply to any claim described in paragraph (1).

INJURIES OUTSIDE LOCKS

SEC. 1412. [22 U.S.C. 3772] Subject to section 1419(b) of this Act, the Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels which may arise by reason of their presence in the Panama Canal, or waters adjacent thereto, other than the locks, when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. In the case of a vessel which is required by or pursuant to regulations prescribed pursuant to section 1801 of this Act to have a Panama Canal pilot on duty aboard, damages may not be adjusted and paid for injuries to the vessel, or its cargo, crew, or passengers, incurred while the vessel was underway and in motion, unless at the time the injuries were incurred the navigation or movement of the vessel was under the control of a Panama Canal pilot. No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within one year after the date of the injury or the date of by November 18, 1998, whichever is later.

MEASURE OF DAMAGES GENERALLY

SEC. 1413. [22 U.S.C. 3773] In determining the amount of the award of damages for injuries to a vessel for which the Commission is determined to be liable there may be included—

(1) the actual or estimated cost of repairs;

(2) charter hire actually lost by the owners, or charter hire actually paid, depending upon the terms of the charter party, for the time the vessel is undergoing repairs;

(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire; and

(4) other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

Agent's fees, or commissions, or other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed. The Commission shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value cannot be determined, the value of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If

the books are unavailable, such other evidence shall be furnished as may be necessary.

DELAYS FOR WHICH NO RESPONSIBILITY IS ASSUMED

SEC. 1414. [22 U.S.C. 3774] The Commission is not responsible, and may not consider any claim, for demurrage or delays caused by—

(1) landslides or other natural causes;

(2) necessary construction or maintenance work of Canal locks, terminals, or equipment;

(3) obstruction arising from accidents;

(4) time necessary for admeasurement;

(5) congestion of traffic;

(6) investigation of a marine accident that is conducted within 24 hours after the accident occures, except that any liability of the Commission beyond that 24-hour period shall be limited to the extent to which the accident was caused, or contributed to, by the negligence of an employee of the Commission acting within the scope of the employee's official duties; or

(7) except as specially set forth in this subchapter, any other cause.

SETTLEMENT OF CLAIMS

SEC. 1415. [22 U.S.C. 3775] The Commission, by mutual agreement, compromise, or otherwise, may adjust and determine the amounts of the respective awards of damages pursuant to this subchapter. Such amounts may be paid only out of money allotted for the maintenance and operation of the Panama Canal. Acceptance by a claimant of the amount awarded to him shall be deemed to be in full settlement of such claim against the Government of the United States.

ACTIONS ON CLAIMS

SEC. 1416. [22 U.S.C. 3776] Subject to section 1419(b) of this Act, a claimant for damages pursuant to section 1411(a) or 1412 of this Act who considers himself aggrieved by the findings, determination, or award of the Commission in reference to his claim may bring an action on the claim against the Commission in the United States District Court for the Eastern District of Louisiana. Subject to the provisions of this chapter and of applicable regulations issued pursuant to section 1801 of this Act relative to navigation of the Panama Canal and adjacent waters, such actions shall proceed and be heard by the court without a jury according to the principles of law and rules of practice obtaining generally in like cases between a private party and a department or agency of the United States. Any judgment obtained against the Commission in an action under this subchapter may be paid out of money allotted for the maintenance and operation of the Panama Canal. An action for damages cognizable under this section shall not otherwise lie against the United States or the Commission, nor in any other court, than as provided in this section; nor may it lie against any officer or employee of the United States or of the Commission. Any action on a claim under this section shall be barred unless the ac-

tion is brought within 180 days after the date on which the Commission mails to the claimant written notification of the Commission's final determination with respect to the claim or by May 17, 1998, whichever is later. Attorneys appointed by the Commission shall represent the Commission in any action arising under this subchapter.

INVESTIGATION OF ACCIDENT OR INJURY GIVING RISE TO CLAIM

SEC. 1417. [22 U.S.C. 3777] Notwithstanding any other provision of law, a claim may not be considered under this subchapter, or an action for damages lie thereon, unless, prior to the departure from the Panama Canal of the vessel involved—

(1) an investigation of the accident or injury giving rise to the claim has been completed, which shall include a hearing by the Board of Local Inspectors of the Commission; and

(2) the basis for the claim has been laid before the Commission.

BOARD OF LOCAL INSPECTORS

SEC. 1418. [22 U.S.C. 3778] (a) The President shall provide for the establishment of a Board of Local Inspectors of the Panama Canal Commission which shall perform, in accordance with regulations prescribed by the President—

(1) the investigations required by section 1417 of this Act; and

(2) such other duties with respect to marine matters as may be assigned by the President.

(b) In conducting any investigation pursuant to subsection (a) of this section, the Board of Local Inspectors established pursuant to such subsection may summon witnesses, administer oaths, and require the production of books and papers necessary for such investigation.

INSURANCE

SEC. 1419. (a) [22 U.S.C. 3779] The Commission is authorized to purchase insurance to protect the Commission against major and unpredictable revenue losses or expenses arising from catastrophic marine accidents or other unpredictable events.

(b)(1) The Commission may by regulation require as a condition of transit through the Panama Canal or presence in the Panama Canal or waters adjacent thereto that any potential claimant under section 1411 or 1412 of this Act be covered by insurance against the types of injuries described in those sections. The amount of insurance so required shall be specified in those regulations, but may not exceed $1,000,000.

(2) In a claim under section 1411 or 1412 of this Act for which the Commission has required insurance under this subsection, the Commission's liability shall be limited to the amount of damages in excess of the amount of insurance required by the Commission.

(3) In regulations under this subsection, the Commission may prohibit consideration or payment by it of claims presented by or on behalf of an insurer or subrogee of a claimant in a case for

which the Commission has required insurance under this subsection.

CHAPTER 5—PUBLIC PROPERTY

ASSETS AND LIABILITIES OF PANAMA CANAL COMPANY

SEC. 1501. [22 U.S.C. 3781] All property and other assets of the Panama Canal Company shall revert to the United States on the effective date of this Act, and, except as otherwise provided by law, the United States shall assume the liabilities, including contractual obligations, of the Panama Canal Company then outstanding. The Commission may use such property, facilities, and records of the Panama Canal Company as are necessary to carry out its functions.

TRANSFERS AND CROSS-SERVICING BETWEEN AGENCIES

SEC. 1502. [22 U.S.C. 3782] (a) In the interest of economy and maximum efficiency in the utilization of property and facilities of the United States, there are authorized to be transferred between departments and agencies of the United States, with or without reimbursement, such facilities, buildings, structures, improvement, stock, and equipment located in the Republic of Panama, and used for their activities therein, as may be mutually agreed upon by the departments and agencies involved and approved by the President of the United States or his designee.

(b) The Commission may enter into cross-serving agreements with any other department or agency of the United States for the use of facilities, furnishing of services, or performance of functions.

(c) The Commission, any department or agency of the United States, or any United States court in the Republic of Panama is authorized to transfer to the Government of the Republic of Panama any record of such Commission, department, agency, or court, or copy thereof, including any record acquired from the Canal Zone Government or Panama Canal Company (including any vital statistics record), to any other department, agency, or court of the United States if such action is determined by the Commission, the head of the department or agency concerned, or the judge of the court concerned to be in the interest of the United States. Transfer of any record or copy thereof under this section to the Government of the Republic of Panama shall be made under the coordination of and with the approval of the United States Ambassador to the Republic of Panama.

(d) The provisions of this section shall apply to the Smithsonian Institution.

DISPOSITION OF PROPERTY OF THE UNITED STATES

SEC. 1503. [22 U.S.C. 3783] No property of the United States located in the Republic of Panama may be disposed of except pursuant to law enacted by the Congress.

TRANSFER OF PROPERTY TO PANAMA

SEC. 1504. [22 U.S.C. 3784] (a)(1) On the date on which the Panama Canal Treaty of 1977 enters into force, the Secretary of State may convey to the Republic of Panama the Panama Railroad and such property located in the area which, immediately before such date, comprised the Canal Zone and which is not within the land and water areas the use of which is made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(2) Property transferred pursuant to paragraph (1) of this subsection may not include buildings and other facilities, except housing, located outside such areas, the use of which is retained by the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b) With respect to the transfer of all other property (not described in subsection (a)(1) of this section) to be transferred in accordance with the terms of the Panama Canal Treaty of 1977 and related agreements, the Secretary of State may convey such property from time to time in accordance with the terms of such Treaty and related agreements. Before the transfer of any such property, the President must submit a written report to the Congress—

(1) precisely identifying and describing the particular property to be transferred;

(2) certifying the state of compliance by the Republic of Panama with such Treaty and related agreements; and

(3) setting forth the reasons for the conveyance being made at the particular time.

(c) The Panama Canal, and such other property referred to in paragraph 2(d) of Article XIII of the Panama Canal Treaty of 1977 that has not been previously transferred in accordance with paragraphs 2(a), 2(b), and 2(c) of such Article, shall not be transferred to the Republic of Panama prior to December 31, 1999.

CHAPTER 6—TOLLS FOR USE OF THE PANAMA CANAL

PRESCRIPTION OF MEASUREMENT RULES AND RATES OF TOLLS

SEC. 1601. [22 U.S.C. 3791] The Commission may, subject to the provisions of this Act, prescribe and from time to time change—

(1) the rules for the measurement of vessels for the Panama Canal; and

(2) the tolls that shall be levied for use of the Panama Canal.

BASES OF TOLLS

SEC. 1602. [22 U.S.C. 3792] (a) Tolls on merchant vessels, army and navy transports, colliers, tankers, hospital ships, and supply ships shall be based on net vessel tons of one hundred cubic feet each of actual earning capacity, or its equivalent, determined in accordance with the rules for the measurement of vessels for the Panama Canal, and tolls on other floating craft shall be based on displacement tonnage. The tolls on vessels in ballast without passengers or cargo may be less than the tolls for vessels with passengers or cargo. Tolls for small vessels (including yachts), as de-

fined by the Commission, may be set at rates determined by the Commission without regard to the preceding provisions of this subsection.

(b) Tolls shall be prescribed at rates calculated to produce revenues to cover as nearly as practicable all costs of maintaining and operating the Panama Canal (including costs authorized to be paid from the Panama Canal Dissolution Fund under section 1305(c)), together with the facilities and appurtenances related thereto, including unrecovered costs incurred on or after the effective date of this Act, interest, depreciation, working capital, payments to the Republic of Panama pursuant to paragraph 5 of Article III and paragraph 4 (a) and (b) of Article XIII of the Panama Canal Treaty of 1977, and capital for plant replacement, expansion, and improvements. Tolls shall not be prescribed at rates calculated to produce revenues sufficient to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977.

(c) Vessels operated by the United States, including vessels of war and auxiliary vessels, and ocean-going training ships owned by the United States and operated by State nautical schools, shall pay tolls.

(d) The levy of tolls is subject to the provisions of section 1 of Article III of the treaty between the United States of America and Great Britain signed November 18, 1901, of Article I of the treaty between the United States of America and the Republic of Colombia signed April 6, 1914, and of Articles II, III, and VI of the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal, between the United States of America and the Republic of Panama, signed September 7, 1977.

CALCULATION OF INTEREST

SEC. 1603. [22 U.S.C. 3793] (a) For purposes of sections 1311 and 1602 of this Act, interest shall be computed, at the rate determined by the Secretary of the Treasury, on the investment of the United States in the Panama Canal as shown in the accounts of the Panama Canal Company at the close of business on the day preceding the effective date of this Act, and as adjusted in accordance with subsections (b) and (c) of this section. Capital investment for interest purposes shall not include any interest during construction.

(b) The investment of the United States described in subsection (a) of this section—

(1) shall be increased by—

(A) the amount of expenditures from the Panama Canal Revolving Fund, and

(B) the value of property transferred to the Commission by any other department or agency of the United States, as determined in accordance with subsection (c) of this section; and

(2) shall be decreased by—

(A) the amount of the funds deposited in the Panama Canal Revolving Fund,

(B) the value of property transferred to the Republic of Panama pursuant to this or any other Act on or after the date on which the Panama Canal Treaty of 1977 enters into force, and

(C) the value of property transferred by the Commission to any other department or agency of the United States.

(c) The value of property transferred to the Commission by any other department or agency of the United States shall be determined by the Director of the Office of Management and Budget. In computing such value, such Director shall give due consideration to the cost and probable earning power of the transferred property, or the usable value to the Commission if clearly less than cost, and shall make adequate provisions for depreciation, obsolescence, and other determinable decreases in value. Insofar as practicable, the value of such transferred property shall exclude any portion of such value properly allocable to national defense.

(d) The Panama Canal Commission shall pay to the Treasury of the United States interest on the investment of the United States, as determined under this section. Such interest shall be deposited in the general fund of the Treasury.

PROCEDURES

SEC. 1604. [22 U.S.C. 3794] (a) The Commission shall publish in the Federal Register notice of any proposed change in the rules of measurement or rates of tolls referred to in section 1601 of this Act. The Commission shall give interested parties an opportunity to participate in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of publication of the notice. The notice shall include the substance of the proposed change and a statement of the time, place, and nature of the proceedings. At the time of publication of such notice, the Commission shall make available to the public an analysis showing the basis and justification for the proposed change, which, in the case of a change in rates of tolls, shall indicate the conformity of the existing and proposed rates of tolls with the requirements of section 1602 of this Act, and the Commission's adherence to the requirement for full consideration of the following factors set forth in Understanding (1) incorporated in the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (adopted by the United States Senate on March 16, 1978):

(1) the costs of operating and maintaining the Panama Canal;

(2) the competitive position of the use of the Canal in relation to other means of transportation;

(3) the interests of the United States and the Republic of Panama in maintaining their domestic fleets;

(4) the impact of such a change in rates of tolls on the various geographical areas of each of the two countries; and

(5) the interests of both countries in maximizing their international commerce.

(b) After consideration of the relevant matter presented, the Commission may revise the proposed rules of measurement or rates of tolls, as the case may be, except that, in the case of rates of tolls, if such revision proposes rates greater than those originally proposed, a new analysis of the proposed rates shall be made available to the public, and a new notice of the revised proposal shall be published in the Federal Register apprising interested persons of the opportunity to participate further in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of publication of the new notice. The procedure set forth in this subsection shall be followed for any subsequent revision of the proposed rates of tolls by the Commission which proposes rates higher than those in the preceding proposal.

(c) After the proceedings have been conducted pursuant to subsections (a) and (b), the Commission may change the rules of measurement or rates of tolls, as the case may be. The Commission shall publish notice of any such change in the Federal Register not less than 30 days before the effective date of the change.

(d) Action to change the rules of measurement for the Panama Canal or the rates of tolls for the use of the Canal pursuant to this chapter shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code.

[SEC. 1605 repealed by section 3546(a)(1) of Public Law 104–201 (110 Stat. 2867)]

CHAPTER 7—GENERAL REGULATIONS

[SEC. 1701 repealed by section 3546(a)(2) of Public Law 104–201 (110 Stat. 2867)]

[SEC. 1702 repealed by section 3546(a)(3) of Public Law 104–201 (110 Stat. 2867)]

CHAPTER 8—SHIPPING AND NAVIGATION

Subchapter I—Operation of Canal

OPERATING REGULATIONS

SEC. 1801. [22 U.S.C. 3811] The Commission may prescribe, and from time to time amend, regulations governing—

(1) the operation of the Panama Canal;

(2) the navigation of the harbors and other waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal;

(3) the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto;

(4) pilotage in the Panama Canal or the approaches thereto through the adjacent waters; and

(5) the licensing of officers or other operators of vessels navigating the waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal.

Subchapter II—Inspection of Vessels

VESSELS SUBJECT TO INSPECTION

SEC. 1811. [22 U.S.C. 3821] With the exception of private vessels merely transiting the Panama Canal, and of public vessels of all nations, vessels navigating the waters of the Panama Canal shall be subject to an annual inspection of hulls, boilers, machinery, equipment, and passenger accommodations.

FOREIGN VESSELS

SEC. 1812. [22 U.S.C. 3822] With respect to a foreign vessel of a country which has inspection laws approximating those of the United States, any such vessel having an unexpired certificate of inspection duly issued by the authorities of such country shall not be subject to an inspection other than that necessary to determine whether the vessel, its boilers, and its lifesaving equipment are as stated in the certificate of inspection. A certificate of inspection may not be accepted as evidence of lawful inspection under this section unless similar privileges are granted to vessels of the United States under the laws of the country to which the vessel belongs.

REGULATIONS GOVERNING INSPECTION

SEC. 1813. [22 U.S.C. 3823] The Commission shall prescribe, and from time to time may amend, regulations concerning the inspection of vessels conforming as nearly as practicable to the laws and regulations governing marine inspection by the United States Coast Guard.

[TITLE II repealed by section 3546(a)(4) of Public Law 104–201 (110 Stat. 2868)]

TITLE III—GENERAL PROVISIONS

CHAPTER 1—PROCUREMENT

PROCUREMENT SYSTEM

SEC. 3101. [22 U.S.C. 3861] (a) PANAMA CANAL ACQUISITION REGULATION.—(1) The Commission shall establish by regulation a comprehensive procurement system. The regulation shall be known as the "Panama Canal Acquisition Regulation" (in this section referred to as the "Regulation") and shall provide for the procurement of goods and services by the Commission in a manner that—

(A) applies the fundamental operating principles and procedures in the Federal Acquisition Regulation;

(B) uses efficient commercial standards of practice; and

(C) is suitable for adoption and uninterrupted use by the Republic of Panama after the Canal Transfer Date.

(2) The Regulation shall contain provisions regarding the establishment of the Panama Canal Board of Contract Appeals described in section 3102.

(b) SUPPLEMENT TO REGULATION.—The Commission shall develop a Supplement to the Regulation (in this section referred to

as the "Supplement") that identifies both the provisions of Federal law applicable to procurement of goods and services by the Commission and the provisions of Federal law waived by the Commission under subsection (c).

(c) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the Commission shall determine which provisions of Federal law should not apply to procurement by the Commission and may waive those laws for purposes of the Regulation and Supplement.

(2) For purposes of paragraph (1), the Commission may not waive—

(A) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423);

(B) the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), other than section 10(a) of such Act (41 U.S.C. 609(a)); or

(C) civil rights, environmental, or labor laws.

(d) CONSULTATION WITH ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—In establishing the Regulation and developing the Supplement, the Commission shall consult with the Administrator for Federal Procurement Policy.

(e) EFFECTIVE DATE.—The Regulation and the Supplement shall take effect on the date of publication in the Federal Register, or January 1, 1999, whichever is earlier.

PANAMA CANAL BOARD OF CONTRACT APPEALS

SEC. 3102. [22 U.S.C. 3862] (a) ESTABLISHMENT.—(1) The Secretary of Defense, in consultation with the Commission, may establish a board of contract appeals, to be known as the Panama Canal Board of Contract Appeals, in accordance with section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607). Except as otherwise provided by this section, the Panama Canal Board of Contract Appeals (in this section referred to as the "Board") shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) in the same manner as any other agency board of contract appeals established under that Act.

(2) The Board shall consist of three members. At least one member of the Board shall be licensed to practice law in the Republic of Panama. Individuals appointed to the Board shall take an oath of office, the form of which shall be prescribed by the Secretary of Defense.

(3) Compensation for members of the Board of Contract Appeals shall be established by the Commission's supervisory board. The annual compensation established for members may not exceed the rate of basic pay established for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The compensation of a member may not be reduced during the member's term of office from the level established at the time of the appointment of the member.

(b) EXCLUSIVE JURISDICTION TO DECIDE APPEALS.—Notwithstanding section 10(a)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a)(1)) or any other provision of law, the Board shall have exclusive jurisdiction to decide an appeal from a decision of a contracting officer under section 8(d) of such Act (41 U.S.C. 607(d)).

(c) EXCLUSIVE JURISDICTION TO DECIDE PROTESTS.—The Board shall decide protests submitted to it under this subsection by interested parties in accordance with subchapter V of title 31, United States Code. Notwithstanding section 3556 of that title, section 1491(b) of title 28, United States Code, and any other provision of law, the Board shall have exclusive jurisdiction to decide such protests. For purposes of this subsection—

(1) except as provided in paragraph (2), each reference to the Comptroller General in sections 3551 through 3555 of title 31, United States Code, is deemed to be a reference to the Board;

(2) the reference to the Comptroller General in section 3553(d)(3)(C)(ii) of such title is deemed to be a reference to both the Board and the Comptroller General;

(3) the report required by paragraph (1) of section 3554(e) of such title shall be submitted to the Comptroller General as well as the committees listed in such paragraph;

(4) the report required by paragraph (2) of such section shall be submitted to the Comptroller General as well as Congress; and

(5) section 3556 of such title shall not apply to the Board, but nothing in this subsection shall affect the right of an interested party to file a protest with the appropriate contracting officer.

(d) PROCEDURES.—The Board shall prescribe such procedures as may be necessary for the expeditious decision of appeals and protests under subsections (b) and (c).

(e) COMMENCEMENT.—The Board shall begin to function as soon as it has been established and has prescribed procedures under subsection (d).

(f) TRANSITION.—The Board shall have jurisdiction under subsections (b) and (c) over any appeals and protests filed on or after the date on which the Board begins to function. Any appeals and protests filed before such date shall remain before the forum in which they were filed.

(g) OTHER FUNCTIONS.—The Board may perform functions similar to those described in this section for such other matters or activities of the Commission as the Commission may determine and in accordance with regulations prescribed by the Commission.

CHAPTER 2—IMMIGRATION

SPECIAL IMMIGRANTS

SEC. 3201.[1] * * *

CHAPTER 3—REPORTS, AMENDMENTS; REPEALS AND REDESIGNATION; EFFECTIVE DATE

REPORT

SEC. 3301. [22 U.S.C. 3871] Until the termination of the Panama Canal Treaty of 1977, the President shall report annually on the status of the exercise of the rights and responsibilities of the

[1] Section 3201 amended several sections of the Immigration and Nationality Act.

United States under that Treaty. Such report shall include a discussion of the following:

(1) The actions taken by the Government of the Republic of Panama with respect to the living conditions of persons who resided in the Canal Zone before the effective date of this Act and who continue to reside in those areas made available to the United States under the Agreement in Implementation of Article III of the Panama Canal Treaty.

(2) The terms, conditions, and charges for land-use licenses within the canal operating areas specified in the Agreement in Implementation of Article III of the Panama Canal Treaty.

(3) The condition of former employees (and their dependents) of the Panama Canal Company and the Canal Zone Government who reside in the Republic of Panama on or after the effective date of this Act.

EXEMPTION FROM METRIC CONVERSION ACT OF 1975

SEC. 3302. [22 U.S.C. 3873] The Commission is exempt from the provisions of the Metric Conversion Act of 1975 (15 U.S.C. 205a et seq.).

REPEALS AND REDESIGNATION

SEC. 3303. [Omitted-Amendments]

EFFECTIVE DATE

SEC. 3304. [22 U.S.C. 3601 note] Except as provided in sections 1231, 1232, 1241, 1242, 1261, 1605, 2203, 2402, 3101, and 3201 of this Act, the preceding provisions of this Act shall take effect on the date on which the Panama Canal Treaty of 1977 enters into force.

11. SPOILS OF WAR ACT OF 1994

(Part B of title V of Public Law 103–236, approved Apr. 30, 1994)

PART B—SPOILS OF WAR ACT

SEC. 551. [50 U.S.C. 2201 note] SHORT TITLE.

This part may be cited as the "Spoils of War Act of 1994".

SEC. 552. [50 U.S.C. 2201] TRANSFERS OF SPOILS OF WAR.

(a) ELIGIBILITY FOR TRANSFER.—Spoils of war in the possession, custody, or control of the United States may be transferred to any other party, including any government, group, or person, by sale, grant, loan or in any other manner, only to the extent and in the same manner that property of the same type, if otherwise owned by the United States, may be so transferred.

(b) TERMS AND CONDITIONS.—Any transfer pursuant to subsection (a) shall be subject to all of the terms, conditions, and requirements applicable to the transfer of property of the same type otherwise owned by the United States.

SEC. 553. [50 U.S.C. 2202] PROHIBITION ON TRANSFERS TO COUNTRIES WHICH SUPPORT TERRORISM.

Spoils of war in the possession, custody, or control of the United States may not be transferred to any country determined by the Secretary of State, for purposes of section 40 of the Arms Export Control Act [22 U.S.C. 2780], to be a nation whose government has repeatedly provided support for acts of international terrorism.

SEC. 554. [50 U.S.C. 2203] REPORT ON PREVIOUS TRANSFERS.

Not later than 90 days after the date of enactment of this Act [April 30, 1994], the President shall submit to the appropriate congressional committees a report describing any spoils of war obtained subsequent to August 2, 1990 that were transferred to any party, including any government, group, or person, before the date of enactment of this Act [April 30, 1994]. Such report shall be submitted in unclassified form to the extent possible.

SEC. 555. [50 U.S.C. 2204] DEFINITIONS.

As used in this part—

(1) the term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, or, where required by law for certain reporting purposes, the Select Committee on Intelligence of the Senate and the Select Committee on Intelligence of the House of Representatives;

(2) the term "enemy" means any country, government, group, or person that has been engaged in hostilities, whether or not lawfully authorized, with the United States;

(3) the term "person" means—

(A) any natural person;

(B) any corporation, partnership, or other legal entity; and

(C) any organization, association, or group; and

(4) the term "spoils of war" means enemy movable property lawfully captured, seized, confiscated, or found which has become United States property in accordance with the laws of war.

SEC. 556. [50 U.S.C. 2205] CONSTRUCTION.

Nothing in this part shall apply to—

(1) the abandonment or failure to take possession of spoils of war by troops in the field for valid military reasons related to the conduct of the immediate conflict, including the burden of transporting such property or a decision to allow allied forces to take immediate possession of certain property solely for use during an ongoing conflict;

(2) the abandonment or return of any property obtained, borrowed, or requisitioned for temporary use during military operations without intent to retain possession of such property;

(3) the destruction of spoils of war by troops in the field;

(4) the return of spoils of war to previous owners from whom such property had been seized by enemy forces; or

(5)[1] 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.

---

[1] See section 2579 of title 10, United States Code, regarding procedures for handling and retaining battlefield objects by members of the Armed Forces.

12. DEFENSE PRODUCTION ACT OF 1950

(Act of September 8, 1950; 50 U.S.C. App. 2061 et seq.)

AN ACT To establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen controls over credit, and by these measures facilitate the production of goods and services necessary for the national security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, [50 U.S.C. App. 2061] divided into titles, may be cited as "the Defense Production Act of 1950."

SEC. 2. [50 U.S.C. App. 2062] DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the vitality of the industrial and technology base of the United States is a foundation of national security that provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency;

(2) in peacetime, the health of the industrial and technological base contributes to the technological superiority of United States defense equipment, which is a cornerstone of the national security strategy, and the efficiency with which defense equipment is developed and produced;

(3) in times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency;

(4) in view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, the United States defense mobilization preparedness effort continues to require the development of—

(A) preparedness programs;

(B) domestic defense industrial base improvement measures;

(C) provisions for a graduated response to any threatening international or military situation;

(D) the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand; and

(E) some diversion of certain materials and facilities from civilian use to military and related purposes.

(5) to meet the requirements referred to in this subsection, this Act affords to the President an array of authorities to shape defense preparedness programs and to take appropriate

steps to maintain and enhance the defense industrial and technological base;

(6) the activities referred to in this subsection are needed in order to—

(A) improve domestic defense industrial base efficiency and responsiveness;

(B) reduce the time required for industrial mobilization in the event of an attack on the United States; or

(C) to respond to actions occurring outside of the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect the national defense preparedness of the United States;

(7) in order to ensure national defense preparedness, which is essential to national security, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

(8) to further assure the adequate maintenance of the defense industrial base, to the maximum extent possible, such supplies should be augmented through reliance on renewable fuels, including solar, geothermal, and wind energy and ethanol and its derivatives, and on energy conservation measures;

(9) the domestic defense industrial base is a component part of the core industrial capacity of the Nation;

(10) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

(A) the overall competitiveness of the United States industrial economy; and

(B) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production;

(11) the domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for the national defense;

(12) such dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation; and

(13) the inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain United States Armed Forces in combat for longer than a short period.

(b) STATEMENT OF POLICY.—It is the policy of the United States that—

(1) in order to ensure productive capacity in the event of an attack on the United States, the United States should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such pro-

ductive facilities within limited geographic areas which are vulnerable to attack by an enemy of the United States;

(2) to ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible;

(3) in the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographic dispersal of such facilities in the interest of national defense, except that nothing in this paragraph shall preclude the use of existing industrial facilities;

(4) to ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition should continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

(5) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment; and

(6) plans and programs to carry out this section shall be undertaken with due consideration for promoting efficiency and competition.

TITLE I—PRIORITIES AND ALLOCATIONS

SEC. 101. [50 U.S.C. App. 2071] (a) The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the nor-

mal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(c)(1) Notwithstanding any other provision of this Act, the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2)[1] The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

(A) such materials, services, and facilities are scarce, critical, and essential—

(i) to maintain or expand exploration, production, refining, transportation;

(ii) to conserve energy supplies; or

(iii) To construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conseruation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3)[2] During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

SEC. 102. [50 U.S.C. App. 2072] In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation. In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this Act. This section shall not be construed to limit the authority contained in sections 101 and 704 of this Act.

SEC. 103. [50 U.S.C. App. 2073] Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title or any rule, regulation, or

[1] Section 6(3) of Public Law 102–99 amended section 101 by striking paragraphs (2) and (3) and inserting a new paragraph (2). The amendment probably should have been made to subsection (c) of section 101.

[2] Section 6(4) of Public Law 102–99 amended section 101 by redesignating paragraph (4) as (3). The amendment probably should have been made to subsection (c) of section 101.

order thereunder, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

SEC. 104. [50 U.S.C. App. 2074] LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

(a) WAGE OR PRICE CONTROLS.—No provision of this Act shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

(b) CHEMICAL OR BIOLOGICAL WEAPONS.—No provision of title I of this Act shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities, unless authorized by the President (or the President's designee who is serving in a position at level I of the Executive Schedule in accordance with section 5312 of title 5, United States Code) without further redelegation.

SEC. 105. [50 U.S.C. App. 2075] Nothing in this Act shall be construed to authorize the President to institute, without the approval of the Congress, a program for the rationing of gasoline among classes of end-users.

SEC. 106. [50 U.S.C. App. 2076] For purposes of this Act, "energy" shall be designated as a "strategic and critical material" after the date of the enactment of this section: Provided, That no provision of this Act shall, by virtue of such designation—

(1) grant any new direct or indirect authority to the President for the mandatory allocation or pricing of any fuel or feedstock (including, but not limited to, crude oil, residual fuel oil, any refined petroleum product, natural gas, or coal) or electricity or any other form of energy; or

(2) grant any new direct or indirect authority to the President to engage in the production of energy in any manner whatsoever (such as oil and gas exploration and development, or any energy facility construction), except as expressly provided in sections 305 and 306 for synthetic fuel production.

SEC. 107. [50 U.S.C. App. 2077] STRENGTHENING DOMESTIC CAPABILITY.

(a) IN GENERAL.—Utilizing the authority of title III of this Act or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

(b) CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—

(1) IDENTIFICATION.—

(A) IN GENERAL.—The President, acting through the Secretary of Defense, shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

(B) DEFINITION.—Any component identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presi-

dential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 shall be designated as a critical component for purposes of this Act, unless the President determines that the designation is unwarranted.

(2) MAINTENANCE OF RELIABLE SOURCES OF SUPPLY.—The President shall take appropriate actions to assure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency.

(3) APPROPRIATE ACTION.—For purposes of this subsection, appropriate action may include—

(A) restricting contract solicitations to reliable sources;

(B) restricting contract solicitations to domestic sources pursuant to—

(i) section 2304(b)(1)(B) or section 2304(c)(3) of title 10, United States Code;

(ii) section 303(b)(1)(B) or section 303(c)(3) of the Federal Property and Administrative Services Act of 1949; or

(iii) other statutory authority;

(C) stockpiling critical components; and

(D) developing substitutes for a critical component or a critical technology item.

SEC. 108. [50 U.S.C. App. 2078] MODERNIZATION OF SMALL BUSINESS SUPPLIERS.

(a) IN GENERAL.—In providing any assistance under this Act, the President shall accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.

(b) MODERNIZATION OF EQUIPMENT.—

(1) IN GENERAL.—Funds authorized under title III may be used to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of this Act.

(2) SMALL BUSINESS SUPPLIERS.—In considering proposals for title III projects under paragraph (1), the President shall provide a strong preference for proposals submitted by a small business supplier or subcontractor whose proposal—

(A) has the support of the department or agency which will provide the guarantee;

(B) reflects that the small business concern has made arrangements to obtain qualified outside assistance to support the effective utilization of the advanced manufacturing equipment being proposed for installation; and

(C) meets the requirements of section 301, 302, or 303.

TITLE II—AUTHORITY TO REQUISITION AND CONDEMN

[The authority to condemn was added by section 102 of the Defense Production Act Amendments of 1951, 65 Stat. 132–133,

July 31, 1951. The title was terminated at the close of June 30, 1953, by section 11 of the Defense Production Act Amendments of 1953, 67 Stat. 131, June 30, 1953.]

TITLE III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

SEC. 301. [50 U.S.C. App. 2091] (a)(1) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of Defense, the Department of Energy, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (herein-after referred to as "guaranteeing agencies") without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small-business concern (as defined in section 714(a)(1) of this Act) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

(2) Except as provided in section 305 and section 306, no authority contained in section 301, 302, or 303 may be used in any manner—

(A) in the development, production, or distribution of synthetic fuel.;

(B) for any synthetic fuel project;

(C) to assist any person for the purpose of providing goods or services to a synthetic fuel project; or

(D) to provide any assistance to any person for the purchase of synthetic fuel.

(3) Except during periods of national emergency declared by the Congress or the President, a guarantee may be entered into under this section only if the President determines that—

(A) the guaranteed contract or activity is for industrial resources or a critical technology item which is essential to the national defense;

(B) without the guarantee, United States industry cannot reasonably be expected to provide the needed industrial resources or critical technology item in a timely manner;

(C) the guarantee is the most cost-effective, expedient, and practical alternative for meeting the need involved; and

(D)[1] the combination of the United States national defense demand and foreseeable nondefense demand is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the guarantee.

(b) Any Federal agency or any Federal Reserve bank, when designated by the President, is hereby authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of this section. All such funds as may be necessary to enable any such fiscal agent to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency. No such fiscal agent shall have any responsibility or accountability except as agent in taking any action pursuant to or under authority of the provisions of this section. Each such fiscal agent shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including among such expenses, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

(c) All actions and operations of such fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as he may prescribe; and the President is authorized to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(d) Each guaranteeing agency is hereby authorized to use for the purposes of this section any funds which have heretofore been appropriated or allocated or which hereafter may be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purpose of meeting the necessities of the national defense.

(e)(1)(A) Except as provided in subparagraph (D), a guarantee may be made under this section only if the industrial resource shortfall which such guarantee is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section.

(B) Any such guarantee may be made only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to subparagraph (A).

(C) If the making of any guarantee or guarantees to correct an industrial resource shortfall would cause the aggregate outstanding

[1] Indentation so in law.

amount of all guarantees for such industrial resource shortfall to exceed $50,000,000, any such guarantee or guarantees may be made only if specifically authorized by law.

(D)[1] The requirements of subparagraphs (A), (B), and (C) may be waived—

(i)[1] during periods of national emergency declared by the Congress or the President; or

(ii)[1] upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

(2) The authority conferred by this section shall not be used primarily to prevent the financial insolvency or bankruptcy of any person, unless

(A) the President certifies that the insolvency or bankruptcy would have a direct and substantially adverse effect upon defense production; and

(B) a copy of such certification, together with a detailed justification thereof, is transmitted to the Congress and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives at least ten days prior to the exercise of that authority for such use.

SEC. 302. [50 U.S.C. App. 2092] (a) To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of industrial resources or a critical technology item for the national defense, the President may make provisions for loans (including participations, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, and manufacture of newsprint.

(b) Such loans may be made without regard to the limitations of existing law and on such terms and conditions as the President deems necessary, except that—

(1) financial assistance may be extended only to the extent that it is not otherwise available on reasonable terms; and

(2) except during periods of national emergency declared by the Congress or the President, no such loan may be made unless the President determines that—

(A) the loan is for the expansion of capacity, the development of a technological process, or the production of materials essential to the national defense;

(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need; and

(D) the combination of the United States national defense demand and foreseeable nondefense demand is not

[1] Indentation so in law.

less than the output of domestic industrial capability, as determined by the President, including the output to be established through the loan.

(c)(1) Except as provided in paragraph (4), no loans may be made under this section, unless the industrial resource shortfall which such loan is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (b)(2) of this section.

(2) Any such loan may be made only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to paragraph (1).

(3) If the making of any loan or loans to correct an industrial resource shortfall would cause the aggregate outstanding amount of all loans for such industrial resource shortfall to exceed $50,000,000, any such loans or loans may be made only if specifically authorized by law.

(4)[1] The requirements of paragraphs (1), (2), and (3) may be waived—

(A)[1] during periods of national emergency declared by the Congress or the President; and

(B)[1] upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

SEC. 303. [50 U.S.C. App. 2093] (a) PRESIDENTIAL PROVISIONS.—

(1) IN GENERAL.—To assist in carrying out the objectives of this Act, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale; and

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials.

(2) TREATMENT OF CERTAIN AGRICULTURAL COMMODITIES.—Purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

(3) TERMS OF SALES.—No commodity purchased under this subsection shall be sold at less than—

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of—

(i) the current domestic market price for such commodity; or

[1] Indentation so in law.

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949.

(4) DELIVERY DATES.—No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the expiration of this section.

(5) PRESIDENTIAL DETERMINATIONS.—Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

(A) the industrial resource or critical technology item is essential to the national defense;

(B) without Presidential action under the authority provided for in this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource or critical technology item in a timely manner;

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need; and

(D) the combination of the United States national defense demand and foreseeable nondefense demand for the industrial resource or critical technology item is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the purchase, purchase commitment, or other action.

(6) IDENTIFICATION OF SHORTFALL.—

(A) IN GENERAL.—Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (5).

(B) TIMING OF ACTION.—Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to subparagraph (A).

(C) LIMITATION.—If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed $50,000,000, any such action or actions may be taken only if specifically authorized by law.

(7) WAIVER.—The requirements of paragraphs (1) through (6) may be waived—

(A) during periods of national emergency declared by the Congress or the President; or

(B) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to

avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

(b) Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under such subsection may be made without regard to the limitations of existing law, for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if there be no established ceiling prices, currently prevailing market prices) or anticipated loss on resale shall not be made unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.[1]

(c) If the President finds—

(1) that under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of the act; or

(2) that an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials,

he may make provision for subsidy payments on any such domestically produced material other than an agricultural commodity in such amounts and in such manner (including purchases of such material and its resale at a loss without regard to the limitations of existing law), and on such terms and conditions, as he determines to be necessary to insure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained as the case may be.

(d) The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) When in his judgment it will aid the national defense the President is authorized to install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the United States Government, and to install Government owned equipment in plants, factories, and other industrial facilities owned by private persons.

(f) Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to the provisions of this section which, in the judgment of the President, are excess to the needs of programs under this act, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) when the President deems such action to be in the public interest. Transfers

[1] Public Law 96–294, the Energy Security Act of June 30, 1980, extended the period for purchases and commitments to purchase and sales under the provisions of section 303 from September 30, 1985, to September 30, 1995.

made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of such Act, except that costs incident to such transfer other than acquisition costs shall be paid or reimbursed from such funds, and the acquisition costs of such metals, minerals, and materials transferred shall be deemed to be net losses incurred by the transferring agency and the notes payable issued to the Secretary of the Treasury representing the amounts thereof shall be canceled. Upon the cancellation of any such notes the aggregate amount of borrowing which may be outstanding at any one time under section 304(b) of this act, as amended, shall be reduced in an amount equal to the amount of any notes so canceled.

(g) When in his judgement it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

SEC. 304. [50 U.S.C. App. 2094] DEFENSE PRODUCTION ACT FUND.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Production Act Fund (hereafter in this section referred to as "the Fund").

(b) MONEYS IN FUND.—There shall be credited to the Fund—

(1) all moneys appropriated for the Fund, as authorized by section 711(c); and

(2) all moneys received by the Fund on transactions entered into pursuant to section 303.

(c) USE OF FUND.—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

(d) DURATION OF FUND.—Moneys in the Fund shall remain available until expended.

(e) FUND BALANCE.—The Fund balance at the close of each fiscal year shall not exceed $400,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds $400,000,000, the amount in excess of $400,000,000 shall be paid into the general fund of the Treasury.

(f) FUND MANAGER.—The President shall designate a Fund manager. The duties of the Fund manager shall include—

(1) determining the liability of the Fund in accordance with subsection (g);

(2) ensuring the visibility and accountability of transactions engaged in through the Fund; and

(3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

(g) LIABILITIES AGAINST FUND.—When any agreement entered into pursuant to this title after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

SEC. 305. [50 U.S.C. App. 2095] (a)(1)(A) Subject to subsection (k)(1), in order to encourage and expedite the development of synthetic fuel for use for national defense purposes, the President, utilizing the provisions of this Act (other than sections 101(a), 101(b),

301, 302, 303, and 306), and any other applicable provision of law, shall take immediate action to achieve production of synthetic fuel to meet national defense needs.

(B) The President shall exercise the authority granted by this section—

(i) in consultation with the Secretary of Energy;

(ii) through the Department of Defense and any other Federal department or agency designated by the President; and

(iii) consistent with an orderly transition to the separate authorities established pursuant to the United States Synthetic Fuels Corporation Act of 1980.

(2) This section shall not affect the authority of the United States Synthetic Fuels Corporation.

(b)(1)(A) To assist in carrying out the objectives of this section, the President, subject to subsections (c) and (d), shall—

(i) contract for purchases of, or commitments to purchase, synthetic fuel for Government use for defense needs;

(ii) subject to paragraph (3), issue guarantees in accordance with the provisions of section 301, except that the provisions of section 301(e)(1)(B) shall not apply with respect to such guarantees; and

(iii) subject to paragraph (3), make loans in accordance with the provisions of section 302, except that the provisions of section 302(2) shall not apply with respect to such loans.

(2)(A) Except as provided in subparagraph (B) assistance authorized under this subsection may be provided only to persons who are participating in a synthetic fuel project.

(B) For purposes of fabrication or manufacture of any component of a synthetic fuel project, assistance authorized under paragraph (1)(A)(ii) and paragraph (1)(A)(iii) may be provided to any fabricator or manufacturer of such component.

(3) The President may not utilize the authority under paragraph (1) to provide any loan or guarantee in accordance with the provisions of section 301 or section 302 in amounts which exceed the limitations established in such sections unless the President submits to the Congress notification of the proposed loan or guarantee in the manner specified under section 307 and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307, any proposal pertaining to a proposed loan or guarantee, notice of which is transmitted to the Congress under this paragraph, shall be considered to be a synthetic fuel action.

(c)(1) Subject to paragraph (2), purchases and commitments to purchase under subsection (b) may be made—

(A) without regard to the limitations of existing law (other than the limitations contained in this Act) regarding the procurement of goods or services by the Government; and

(B) subject to section 717(a), for such quantities, on such terms and conditions (including advance payments subject to paragraph (3)), and for such periods as the President deems necessary.

(2) Purchases or commitments to purchase under subsection (b) involving higher than established ceiling prices (or if there are no established ceiling prices, currently prevailing market prices as

determined by the Secretary of Energy) shall not be made unless it is determined that supplies of synthetic fuel could not be effectively increased at lower prices or on terms more favorable to the Government, or that such commitments or purchases are necessary to assure the availability to the United States of supplies overseas for use for national defense purposes.

(3) Advance payments may not be made under this section unless construction has begun on the synthetic fuel project involved or the President determines that all conditions precedent to construction have been met.

(d)(1) Except as provided in paragraph (2), any purchase of or commitment to purchase synthetic fuel under subsection (b) shall be made by solicitation of sealed competitive bids.

(2) In any case in which no such bids are submitted to the President or the President determines that no such bids which have been submitted to the President are acceptable, the President may negotiate contracts for such purchases and commitments to purchase.

(3) Any contract for such purchases or commitments to purchase shall provide that the President has the right to refuse delivery of the synthetic fuel involved and to pay the person involved an amount equal to the amount by which the price for such synthetic fuel, as specified in the contract involved, exceeds the market price, as determined by the Secretary of Energy, for such synthetic fuel on the delivery date specified in such contract.

(4)(A)(i) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President, subject to subparagraph (A)(ii), may not award contracts for the purchase of or commitment to purchase more than 100,000 barrels per day crude oil equivalent of synthetic fuel.

(ii) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President may not award any contract for the purchase or commitment to purchase of more than 75,000 barrels per day crude oil equivalent of synthetic fuel unless the President submits to the Congress notification of such proposed contract or commitment in the manner specified under section 307 and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307, any proposal pertaining to such a proposed contract or commitment, notice of which is transmitted to the Congress under this subparagraph, shall be considered to be a synthetic fuel action.

(B) A contract for the purchase of or commitment to purchase synthetic fuel may be entered into only for synthetic fuel which is produced in a synthetic fuel project which is located in the United States.

(C) Each contract entered into under this section for the purchase of or commitment to purchase synthetic fuel shall provide that all parties to such contract agree to review and to possibly renegotiate such contract within 10 years after the date of the initial production at the synthetic fuel project involved. At the time of such review, the President shall determine the need for continued financial assistance pursuant to such contract.

(5) In any case in which the President, under the provisions of this section, accepts delivery of any synthetic fuel, such synthetic fuel may be used by an appropriate Federal agency. Such Federal agency shall pay for such synthetic fuel the prevailing market price for the product which such synthetic fuel is replacing, as determined by the Secretary of Energy, from sums appropriated to such Federal agency for the purchase of fuel, and the President shall pay, from sums appropriated for such purpose pursuant to the authorizations contained in sections 711(a)(2) and 711(a)(3), an amount equal to the amount by which the contract price for such synthetic fuel as specified in the contract involved exceeds such prevailing market price.

(6) In considering any proposed contract under this section, the President shall take into account the socioeconomic impacts on communities which would be affected by any new or expanded facilities required for the production of the synthetic fuel under such contract.

(e) The procurement power granted to the President under this section shall include the power to transport and store and have processed and refined any product procured under this section.

(f)(1) No authority contained in this section may be exercised to acquire any amount of synthetic fuel unless the President determines that such synthetic fuel is needed to meet national defense needs and that it is not anticipated that such synthetic fuel will be resold by the Government.

(2) In any case in which synthetic fuel is acquired by the Government under this section, such synthetic fuel is no longer needed to meet national defense needs, and such synthetic fuel is not accepted by a Federal agency pursuant to subsection (d)(5), the President shall offer such synthetic fuel to the Secretary of Energy for purposes of meeting the storage requirements of the Strategic Petroleum Reserve.

(3) Any synthetic fuel which is acquired by the Government under this section and which is not used by the Government or accepted by the Secretary of Energy pursuant to paragraph (2) shall be sold in accordance with applicable Federal law.

(g)(1) Any contract under this section including any amendment or other modification of such contract, shall, subject to the availability of unencumbered appropriations in advance, specify in dollars the maximum liability of the Federal Government under such contract as determined in accordance with paragraph (2).

(2) For the purpose of determining the maximum liability under any contract under paragraph (1)—

(A) loans shall be valued at the initial face value of the loan;

(B) guarantees shall be valued at the initial face value of such guarantee (including any amount of interest which is guaranteed under such guarantee);

(C) purchase agreements shall be valued as of the date of each such contract based upon the President's estimate of the maximum liability under such contract; and

(D) any increase in the liability of the Government pursuant to any amendment or other modification to a contract for

a loan, guarantee, or purchase agreement shall be valued in accordance with the applicable preceding subparagraph.

(3) If more than one form of assistance is provided under this section to any synthetic fuel project, then the maximum liability under such contract for purposes of paragraphs (1) and (2) shall be valued at the maximum potential exposure on such project at any time during the life of such project.

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

(5) Any commitment made under this section which is nullified or voided for any reason shall not be considered in the aggregate maximum liability for the purposes of paragraph (4).

(h) For purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), no action in providing any loan, guarantee, or purchase agreement under this section shall be deemed to be a major Federal action significantly affecting the quality of the human environment.

(i) All laborers and mechanics employed for the construction, repair, or alteration of any synthetic fuel project funded, in whole or in part, by a guarantee or loan entered into pursuant to this section shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with 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 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act. Guaranteeing agencies shall not extend guarantees and the President shall not make loans for the construction, repair or alteration of any synthetic fuel project unless a certification is provided to the agency or the President, as the case may be, prior to the commencement of construction or at the time of filing an application for a loan or guarantee, if construction has already commenced, that these labor standards will be maintained at the synthetic fuel project. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276(c) of title 40.

(j)(1) Nothing in this section shall—

(A) affect the jurisdiction of the States and the United States over waters of any stream or over any ground water resource;

(B) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States; or

(C) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

(2) No synthetic fuel project constructed pursuant to the authorities of this section shall be considered to be a Federal

project for purposes of the application for or assignment of water rights.

(k)(1) Subject to paragraph (2), the authority of the President to enter into any new contract or commitment under this section shall cease to be effective on the date on which the President determines that the United States Synthetic Fuels Corporation is established and fully operational consistent with the provisions of the United States Synthetic Fuels Corporation Act of 1980.

(2) Contracts entered into under this section before the date specified in paragraph (1) may be renewed and extended by the President after the date specified in paragraph (1) but only to the extent that Congress has specifically appropriated funds for such renewals and extensions. [1]

SEC. 306. [50 U.S.C. App. 2096] (a)(1) At any time after the date of the enactment of this section, the President may, subject to paragraph (2), invoke the authorities provided under this section upon making all the following determinations and transmitting a report to the Congress regarding such determinations:

(A) a national energy supply shortage has resulted or is likely to result in a shortfall of petroleum supplies in the United States, and such shortage is expected to persist for a period of time sufficient to seriously threaten the adequacy of defense fuel supplies essential to direct defense and direct defense industrial base programs;

(B) the continued adequacy of such supplies cannot be assured and requires expedited production of synthetic fuel to provide such defense fuel supplies;

(C) the expedited production of synthetic fuel to provide such defense fuel supplies will not be accomplished in a timely manner by the United States Synthetic Fuels Corporation; and

(D) the exercise of the authorities provided under subsection (c) is necessary to provide for the expedited production of synthetic fuel to provide such defense fuel supplies.

(2)(A) Any transmittal under paragraph (1) shall contain a determination by the President regarding the extent of the anticipated shortage of petroleum supplies. If the President determines that such shortage is greater than 25 percent, the authorities invoked by the President under this section shall be effective on the date on which the report required under paragraph (1) is transmitted to the Congress.

(B) If the President determines that such shortage is less than 25 percent, the transmittal under paragraph (1) shall be made in accordance with section 307 and the authorities under this section shall be effective only as provided under such section. For purposes of section 307, any determination to invoke authorities under this section, notice of which is transmitted to the Congress under this subsection, shall be considered to be a synthetic fuel action.

(3) No court shall have the authority to review any determination made by the President under this subsection.

(b)(1)(A) Subject to the requirements of subsection (a), in order to encourage and expedite the development of synthetic fuel for use

[1] Section 106 of Public Law 96–294, the Energy Security Act of June 30, 1980, requires an annual report by the President to the Congress on actions taken under sections 305 and 306.

for national defense purposes, the President, utilizing the provisions of this Act (other than sections 101(a), 101(b), 301, 302, 303, and 305), and any other applicable provision of law, shall take immediate action to achieve production of synthetic fuel to meet national defense needs.

(B) The President shall exercise the authority granted by this section—

(i) in consultation with the Secretary of Energy; and

(ii) through the Department of Defense and any other Federal department or agency designated by the President.

(2) This section shall not affect the authority of the United States Synthetic Fuels Corporation.

(c)(1)(A) To assist in carrying out the objectives of this section, the President, subject to subsections (d) and (e), shall—

(i) contract for purchases of or commitments to purchase synthetic fuel for Government use for defense needs;

(ii) subject to paragraph (4), issue guarantees in accordance with the provisions of section 301, except that the provisions of section 301(e)(1)(B) shall not apply with respect to such guarantees;

(iii) subject to paragraph (4), make loans in accordance with the provisions of section 302, except that the provisions of section 302(2) shall not apply with respect to such loans;

(iv) have the authority to require fuel suppliers to provide synthetic fuel in any case in which the President deems it practicable and necessary to meet the national defense needs of the United States. Nothing in this paragraph shall be intended to provide authority for the President to require fuel suppliers to produce synthetic fuel if such suppliers are not already producing synthetic fuel or do not intend to produce synthetic fuel;

(v) have the authority to install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the Government, and to install Government-owned equipment in plants, factories, and other industrial facilities owned by private persons; and

(vi) have the authority to undertake Government synthetic fuel projects in accordance with the provisions of paragraph (2).

(B)(i) Except as provided in clause (ii), assistance authorized under this subsection may be provided only to persons who are participating in a synthetic fuel project.

(ii) For purposes of fabrication or manufacture of any component of a synthetic fuel project, assistance authorized under paragraph (1)(A)(ii) and paragraph (1)(A)(iii) may be provided to any fabricator or manufacturer of such component.

(2)(A) The Government, acting through the President, is authorized to own Government synthetic fuel projects. In any case in which the Government owns a Government synthetic fuel project, the Government shall contract for the construction and operation of such project.

(B) The authority of the Government pursuant to subparagraph (A) to own and contract for the construction and operation

of any Government synthetic fuel project shall include, among other things, the authority to—

(i) subject to subparagraph (C), take delivery of synthetic fuel from such project; and

(ii) transport and store and have processed and refined such synthetic fuel.

(C) Any synthetic fuel which the Government takes delivery of from a Government synthetic fuel project shall be disposed of in accordance with subsection (g).

(D) To the maximum extent feasible, the President shall utilize the private sector for the activities associated with this paragraph.

(3)(A) Except as provided in subparagraph (B), any contract for the construction or operation of a Government synthetic fuel project shall be made by solicitation of sealed competitive bids.

(B) In any case in which no such bids are submitted to the President or the President determines that no such bids have been submitted which are acceptable to the President, the President may negotiate contracts for such construction and operation.

(4) The President may not utilize the authority under paragraph (1) to provide any loan or guarantee in accordance with the provisions of section 301 or section 302 in amounts which exceed the limitations established in such sections unless the President submits to the Congress notification of the proposed loan or guarantee in the manner specified under section 307 and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307, any proposal pertaining to a proposed loan or guarantee, notice of which is transmitted to the Congress under this paragraph, shall be considered to be a synthetic fuel action.

(5) Before the President may utilize any specific authority described under paragraph (1), the President shall transmit to the Congress a statement containing a certification that the determinations made by the President in the transmittal to the Congress under subsection (a)(1) are still valid at the time of the transmittal of such certification.

(6)(A) No authority contained in paragraphs (1)(A)(i) through (1)(A)(iv) may be utilized by the President unless the use of such authority has been authorized by the Congress in an Act hereinafter enacted by the Congress.

(B) The President may not utilize any authority under paragraph (1)(A)(v) or paragraph (1)(A)(vi) unless the proposed exercise of authority has been specifically authorized on a project-by-project basis in an Act hereinafter enacted by the Congress and funds have been specifically appropriated by the Congress for purposes of exercising such authority.

(d)(1) Subject to paragraph (2), purchases and commitments to purchase under subsection (c) may be made—

(A) without regard to the limitations of existing law (other than those limitations contained in this Act) regarding the procurement of goods or services by the Government; and

(B) subject to section 717(a), for such quantities, on such terms and conditions (including advance payments subject to paragraph (3)), and for such periods as the President deems necessary.

(2) Purchases or commitments to purchase under subsection (c) involving higher than established ceiling prices (or if there are no established ceiling prices, currently prevailing market prices as determined by the Secretary of Energy) shall not be made unless it is determined that supplies of synthetic fuel could not be effectively increased at lower prices or on terms more favorable to the Government, or that such commitments or purchases are necessary to assure the availability to the United States of supplies overseas for use for national defense purposes.

(3) Advance payments may not be made under this section unless construction has begun on the synthetic fuel project involved or the President determines that all conditions precedent to construction have been met.

(e)(1) Except as provided in paragraph (2), any purchase or commitment to purchase synthetic fuel under subsection (c) shall be made by solicitation of sealed competitive bids.

(2) In any case in which no such bids are submitted to the President or the President determines that no such bids which have been submitted to the President are acceptable, the President may negotiate contracts for such purchases and commitments to purchase.

(3) Any contract for such purchases or commitments to purchase shall provide that the President has the right to refuse delivery of the synthetic fuel involved and to pay the person involved an amount equal to the amount by which the price for such synthetic fuel, as specified in the contract involved, exceeds the market price, as determined by the Secretary of Energy, for such synthetic fuel on the delivery date specified in such contract.

(4)(A) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President, subject to subparagraph (B), may not award contracts for the purchase of or commitment to purchase more than 100,000 barrels per day crude oil equivalent of synthetic fuel.

(B) With respect to any person, including any other person who is substantially controlled by such person (as determined by the Secretary of Energy), the President may not award any contract for the purchase of or commitment to purchase more than 75,000 barrels per day crude oil equivalent of synthetic fuel unless the President submits to the Congress notification of such proposed contract or commitment in the manner specified under section 307 and such proposed action is either approved or not disapproved by the Congress under such section. For purposes of section 307, any proposal pertaining to such a proposed contract or commitment, notice of which is transmitted to the Congress under this subparagraph, shall be considered to be a synthetic fuel action.

(5) A contract for the purchase of or commitment to purchase synthetic fuel may be entered into only for synthetic fuel which is produced in a synthetic fuel project which is located in the United States.

(6) Each contract entered into under this section for the purchase of or commitment to purchase synthetic fuel shall provide that all parties to such contract agree to review and to possibly renegotiate such contract within 10 years after the date of the initial

production at the synthetic fuel project involved. At the time of such review, the President shall determine the need for continued financial assistance pursuant to such contract.

(7) In any case in which the President, under the provisions of this section, accepts delivery of any synthetic fuel, such synthetic fuel may be used by an appropriate Federal agency. Such Federal agency shall pay for such synthetic fuel the prevailing market price for the product which such synthetic fuel is replacing, as determined by the Secretary of Energy, from sums appropriated to such Federal agency for the purchase of fuel, and the President shall pay, from sums appropriated for such purpose, an amount equal to the amount by which the contract price for such synthetic fuel as specified in the contract involved exceeds such prevailing market price.

(8) In considering any proposed contract under this section, the President shall take into account the socioeconomic impacts on communities which would be affected by any new or expanded facilities required for the production of the synthetic fuel under such contract.

(f) The procurement power granted to the President under this section shall include the power to transport and store and have processed and refined any product procured under this section.

(g)(1) No authority contained in this section may be exercised to acquire any amount of synthetic fuel unless the President determines that such synthetic fuel is needed to meet national defense needs and that it is not anticipated that such synthetic fuel will be resold by the Government.

(2) In any case in which synthetic fuel is acquired by the Government under this section, such synthetic fuel is no longer needed to meet national defense needs, and such synthetic fuel is not accepted by a Federal agency pursuant to subsection (e)(7), the President shall offer such synthetic fuel to the Secretary of Energy for purposes of meeting the storage requirements of the Strategic Petroleum Reserve.

(3) Any synthetic fuel which is acquired by the Government under this section and which is not used by the Government or accepted by the Secretary of Energy pursuant to paragraph (2), shall be sold in accordance with applicable Federal law.

(h)(1) Any contract under this section, including any amendment or other modification of such contract, shall, subject to the availability of unencumbered appropriations in advance, specify in dollars the maximum liability of the Federal Government under such contract as determined in accordance with paragraph (2).

(2) For the purpose of determining the maximum liability under any contract under paragraph (1)—

(A) loans shall be valued at the initial face value of the loan;

(B) guarantees shall be valued at the initial face value of such guarantee (including any amount of interest which is guaranteed under such guarantee);

(C) purchase agreements shall be valued as of the date of each such contract based upon the President's estimate of the maximum liability under such contract;

(D) contracts for activities under subsection (c)(1)(A)(v) shall be valued at the initial face value of such contract;

(E) Government synthetic fuel projects pursuant to subsection (c)(1)(A)(vi) shall be valued at the current estimated cost to the Government, as determined annually by the President; and

(F) any increase in the liability of the Government pursuant to any amendment or other modification to a contract for a loan, guarantee, purchase agreement, contract for activities under subsection (c)(1)(A)(v), or Government synthetic fuel project pursuant to subsection (c)(1)(A)(vi) shall be valued in accordance with the applicable preceding subparagraph.

(3) If more than one form of assistance is provided under this section to any synthetic fuel project then the maximum liability under such contract for purposes of paragraphs (1) and (2) shall be valued at the maximum potential exposure on such project at any time during the life of such project.

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

(5) Any commitment made under this section which is nullified or voided for any reason shall not be considered in the aggregate maximum liability for the purposes of paragraph (4).

(i) For purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), no action in providing any loan, guarantee, or purchase agreement under this section, shall be deemed to be a major Federal action significantly affecting the quality of the human environment.

(j) All laborers and mechanics employed for the construction, repair, or alteration of any synthetic fuel project funded, in whole or in part, by a guarantee or loan entered into pursuant to this section shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with 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 (40 U.S.C. 276a et seq.) and commonly known as the Davis-Bacon Act. Guaranteeing agencies shall not extend guarantees and the President shall not make loans for the construction, repair or alteration of any synthetic fuel project unless a certification is provided to the agency or the President, as the case may be, prior to the commencement of construction or at the time of filing an application for a loan or guarantee, if construction has already commenced, that these labor standards will be maintained at the synthetic fuel project. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276(c) of title 40.

(k)(1) Nothing in this section shall—

(A) affect the jurisdiction of the States and the United States over waters of any stream or over any ground water resource;

(B) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States; or

(C) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

(2) No synthetic fuel project constructed pursuant to the authorities of this section shall be considered to be a Federal project for purposes of the application for or assignment of water rights.

(l) Renewals and extensions of contracts entered into under this section shall be made only to the extent that Congress has specifically appropriated funds for such renewals and extensions, unless the President certifies that the determinations under section 306(a)(1) remain in effect for purposes of the use of such authority.

SEC. 307. [50 U.S.C. App. 2097] (a) For purposes of this section, the term "synthetic fuel action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) The President shall transmit any synthetic fuel action (bearing an identification number) to both Houses of the Congress on the same day.

SEC. 308. [50 U.S.C. App. 2098] (a) For purposes of this Act, the term "Government synthetic fuel project" means a synthetic fuel project undertaken in accordance with the provisions of section 306(c).

(b)(1)(A) For purposes of this Act, the term "synthetic fuel" means any solid, liquid, or gas, or combination thereof, which can be used as a substitute for petroleum or natural gas (or any derivatives thereof, including chemical feedstocks) and which is produced by chemical or physical transformation (other than washing, coking, or desulfurizing) of domestic sources of—

(i) coal, including lignite and peat;

(ii) shale;

(iii) tar sands, including those heavy oil resources where—

(I) the cost and the technical and economic risks make extraction and processing of a heavy oil resource uneconomical under applicable pricing and tax policies; and

(II) the costs and risks are comparable to those associated with shale, coal, and tar sand resources (other than heavy oil) qualifying for assistance under section 305 or section 306; and

(iv) water, as a source of hydrogen only through electrolysis.

(B) Such term includes mixtures of coal and combustible liquids, including petroleum.

(C) Such term does not include solids, liquids, or gases, or combinations thereof, derived from biomass, which includes timber, animal and timber waste, municipal and industrial waste, sewage, sludge, oceanic and terrestrial plants, and other organic matter.

(2)(A) For purposes of this Act, the term "synthetic fuel project" means any facility using an integrated process or processes at a

specific geographic location in the United States for the purpose of commercial production of synthetic fuel. The project may include only—

(i) the facility, including the equipment, plant, machinery, supplies, and other materials associated with the facility, which converts the domestic resource to synthetic fuel;

(ii) the land and mineral rights required directly for use in connection with the facilities for the production of synthetic fuels;

(iii) any facility or equipment to be used in the extraction of a mineral for use directly and exclusively in such conversion;

(I) which—

(aa) is co-located with the conversion facility or is located in the immediate vicinity of the conversion facility; or

(bb) if not co-located or located in the immediate vicinity, is incidental to the project (except in the event of a coal mine where no other reasonable source of coal is available to the project); and

(II) which is necessary to the project; and

(iv) any transportation facility, electric powerplant, electric transmission line or other facility—

(I) which is for the exclusive use of the project;

(II) which is incidental to the project; and

(III) which is necessary to the project, except that transportation facilities used to transport synthetic fuel away from the project shall be used exclusively to transport synthetic fuel to a storage facility or pipeline connecting to an existing pipeline or processing facility or area within close proximity of the project.

(B)(i) Such term may also include a project which will result in the replacement of a significant amount of oil and is—

(I) used solely for the production of a mixture of coal and combustible liquids, including petroleum, for direct use as a fuel, but shall not include—

(aa) any mineral right; or

(bb) any facility or equipment for extraction of any mineral;

(II) used solely for the commercial production of hydrogen from water through electrolysis; and

(III) a magnetohydrodynamic topping cycle used solely for the commercial production of electricity.

(ii) Such a synthetic fuel project using magnetohydrodynamic technology shall only be eligible for guarantees under section 305 or section 306.

(C) For purposes of this paragraph—

(i) the term "exclusive" means for the sole use of the project, except that an incidental by-product might be used for other purposes;

(ii) the term "incidental" means a relatively small portion of the total project cost; and

(iii) the term "necessary" means an integrated part of the project taking into account considerations of economy and efficiency of operation.

(c) For purposes of section 305 and section 306, the term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 309. [50 U.S.C. App. 2099] (a) ANNUAL REPORT ON IMPACT OF OFFSETS.—

(1) REPORT REQUIRED.—Not later than 18 months after the date of the enactment of the Defense Production Act Amendments of 1984, and annually thereafter, the President shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

(2) DUTIES OF THE SECRETARY OF COMMERCE.—The Secretary of Commerce (hereafter in this subsection referred to as "the Secretary") shall—

(A) prepare the report required by paragraph (1);

(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

(C) function as the President's Executive Agent for carrying out this section.

(b) INTERAGENCY STUDIES AND RELATED DATA.—

(1) PURPOSE OF REPORT.—Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

(2) USE OF DATA.—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary's responsibilities with respect to trade offset and countertrade policy development.

(c) NOTICE OF OFFSET AGREEMENTS.—

(1) IN GENERAL.—If 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 agreement exceeding $5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

(2) REGULATIONS.—The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public dis-

closure is subsequently specifically authorized by the firm furnishing the information.

(d) CONTENTS OF REPORT.—

(1) IN GENERAL.—Each report under subsection (a) shall include—

(A) a net assessment of the elements of the industrial base and technology base covered by the report;

(B) recommendations for appropriate remedial action under the authority of this Act, or other law or regulations;

(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

(2) ALTERNATIVE FINDINGS OR RECOMMENDATIONS.—Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.—The findings and recommendations of the reports required by subsection (a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.

SEC. 310. [50 U.S.C. App. 2099a] CIVIL-MILITARY INTEGRATION.

An important purpose of this title is the creation of production capacity that will remain economically viable after guarantees and other assistance provided under this title have expired.

TITLE IV—PRICE AND WAGE STABILIZATION

[This title terminated at the close of April 30, 1953, by section 121(b) of the Defense Production Act Amendments of 1952, 66 Stat. 306, June 30, 1952.]

TITLE V—SETTLEMENT OF LABOR DISPUTES

[This title terminated at the close of April 30, 1953, by section 121(b) of the Defense Production Act Amendments of 1952, 66 Stat. 306, June 30, 1952.]

TITLE VI—CONTROL OF CONSUMER AND REAL ESTATE CREDIT

[The authority for the control of consumer credit terminated June 30, 1952, by section 116(a) of the Defense Production Act Amendments of 1952, 66 Stat. 305, June 30, 1952.]

[The authority for the control of real estate credit terminated at the close of June 30, 1953, by section 11 of the Defense Production Act Amendments of 1953, 67 Stat. 131, June 30, 1953.]

TITLE VII—GENERAL PROVISIONS

SEC. 701. [50 U.S.C. App. 2151] SMALL BUSINESS.

(a) PARTICIPATION.—Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act.

(b) ADMINISTRATION OF ACT.—In administering the programs, implementing regulations, policies, and procedures under this Act, requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

(c) ADVISORY COMMITTEE PARTICIPATION.—Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to this Act.

(d) INFORMATION.—Information about this Act and activities undertaken in accordance with this Act shall be made available to small business concerns.

(e) ALLOCATIONS UNDER SECTION 101.—Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101, small business concerns shall be accorded, to the extent practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging small business concerns.

SEC. 702. [50 U.S.C. App. 2152] DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CRITICAL COMPONENT.—The term "critical component" includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 shall be designated as critical components for purposes of this Act, unless the President determines that the designation is unwarranted.

(2) CRITICAL INDUSTRY FOR NATIONAL SECURITY.—The term "critical industry for national security" means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.

(3) CRITICAL TECHNOLOGY.—The term "critical technology" includes any technology that is included in 1 or more of the

plans submitted pursuant to section 6681 of title 42, United States Code, or section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

(4) CRITICAL TECHNOLOGY ITEM.—The term "critical technology item" means materials directly employing, derived from, or utilizing a critical technology.

(5) DEFENSE CONTRACTOR.—The term "defense contractor" means any person who enters into a contract with the United States—

(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

(B) to perform services for the national defense.

(6) DOMESTIC DEFENSE INDUSTRIAL BASE.—The term "domestic defense industrial base" means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, graduated mobilization, national emergency, or war.

(7) DOMESTIC SOURCE.—The term "domestic source" means a business concern—

(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

(B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

(8) ESSENTIAL WEAPON SYSTEM.—The term "essential weapon system" means a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

(9) FACILITIES.—The term "facilities" includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

(10) FOREIGN SOURCE.—The term "foreign source" means a business entity other than a "domestic source".

(11) INDUSTRIAL RESOURCES.—The term "industrial resources" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

(12) MATERIALS.—The term "materials" includes—

(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, com-

ponents (including critical components), products, and items of supply; and

(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

(13) NATIONAL DEFENSE.—The term "national defense" means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(14) PERSON.—The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(15) SERVICES.—The term "services" includes any effort that is needed for or incidental to—

(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item; or

(B) the construction of facilities.

(16) SMALL BUSINESS CONCERN.—The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

(17) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term "small business concern owned and controlled by socially and economically disadvantaged individuals" has the same meaning as in section 8(d)(3)(C) of the Small Business Act.

SEC. 703. [50 U.S.C. App. 2153] CIVILIAN PERSONNEL.

Any officer or agency head may—

(1) appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates,

except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule, as the President deems appropriate to carry out this Act.

SEC. 704. [50 U.S.C. App. 2154] REGULATIONS AND ORDERS.

(a) IN GENERAL.—Subject to section 709 and subsection (b), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act.

(b) PROCUREMENT REGULATIONS.—Any procurement regulation, procedure, or form issued pursuant to subsection (a) shall be issued pursuant to section 25 of the Office of Federal Procurement Policy Act, and shall conform to any governmentwide procurement policy or regulation issued pursuant to section 6 or 25 of that Act.

SEC. 705. [50 U.S.C. App. 2155] (a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, 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 his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized 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. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned for not more than one year or both.

(d) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

(e) Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

SEC. 706. [50 U.S.C. App. 2156] (a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

SEC. 707. [50 U.S.C. App. 2157] No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, on in any other manner.

SEC. 708. [50 U.S.C. App. 2158] (a) Except as specifically provided in subsection (j) of this section, no provision of this Act shall be deemed to convey to any person any immunity from civil or

criminal liability, or to create defenses to actions, under the antitrust laws.

(b) DEFINITIONS.—For purposes of this Act—

(1) ANTITRUST LAWS.—The term "antitrust laws" has the meaning giving to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(2) PLAN OF ACTION.—The term "plan of action" means any of 1 or more documented methods adopted by participants in an existing voluntary agreement implement that agreement.

(c)(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).

(d)(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirement specified in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(e)(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code—

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate,

and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(f)(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement or plan of action which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publishes such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of two years.

(g) The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

(1) that the agreement or plan is carrying out the purposes of subsection (c)(1);

(2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement or plan; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(h) The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

(1) for the maintenance, by participants in any voluntary agreement or plan of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;

(2) that participants in any voluntary agreement or plan of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for

inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5, United States Code;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement, or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission),

may terminate or modify, in writing, the voluntary agreement or plan of action at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

(i) The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

(j) DEFENSES.—

(1) IN GENERAL.—Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

(2) SCOPE OF DEFENSE.—Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

(3) BURDEN OF PERSUASION.—Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

(4) EXCEPTION FOR ACTIONS TAKEN TO VIOLATE THE ANTITRUST LAWS.—The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

(k) The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monoplies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

(l) The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

(m) On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3) (D) and (G), and (h) (3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

(n) EXEMPTION FROM ADVISORY COMMITTEE ACT PROVISIONS.—Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

(o) PREEMPTION OF CONTRACT LAW IN EMERGENCIES.—In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to

carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

SEC. 709. [50 U.S.C. App. 2159] PUBLIC PARTICIPATION IN RULEMAKING.

(a) EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT.—Any regulation issued under this Act shall not be subject to sections 551 through 559 of title 5, United States Code.

(b) OPPORTUNITY FOR NOTICE AND COMMENT.—

(1) IN GENERAL.—Except as provided in subsection (c), any regulation issued under this Act shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

(2) WAIVER FOR TEMPORARY PROVISIONS.—The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

(3) CONSIDERATION OF PUBLIC COMMENTS.—All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

(c) PUBLIC COMMENT ON PROCUREMENT REGULATIONS.—Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act shall be subject to section 22 of the Office of Federal Procurement Policy Act.

SEC. 710. [50 U.S.C. App. 2160] (a) [Subsec. (a) was repealed by section 12(c)(1) of the Federal Employees Salary Increase Act of 1955, 69 Stat. 180, June 28, 1955.]

(b)(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation.

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act shall be carried on by full-time salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the positions are such that the incumbent

must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(iii) In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.

(3) Appointees under this subsection (b) shall when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Any person employed under this subsection (b) is hereby exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434, and 1914 of title 18, United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99),[1] except that—

(i) exemption hereunder shall not extend to the negotiation or execution, by such appointee, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(ii) exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(iii) exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under this subsection, during the period of such employment and the further period of two years after the termination of such employment; and

(iv) exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service hereunder from any source other than the private employer of the appointee at the time of his appointment hereunder.

(5) Appointments under this subsection (b) shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act;

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

[1] These sections were repealed and supplanted by sections 203–209 of title 18 of the United States Code: see sections 2 and 3 of Public Law 87–849, October 23, 1962 (76 Stat. 1119, 1126).

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of that Act with the appointing department or agency.

(7) At least once every year the Director of the Office of Personnel Management shall survey appointments made under this subsection and shall report his or her findings to the President and make such recommendations as he or she may deem proper.

(8) Persons appointed under the authority of this subsection may be allowed reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, to employ experts and consultants or organizations thereof, as authorized by section 55a of title 5 of the United States Code. Individuals so employed may be compensated at rates not in excess of $50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed $15 per diem in lieu of subsistance and other expenses while so employed. The President is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99). [1]

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies and, utilize such voluntary and uncompensated services, as may from time to time be needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99). [1]

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employ-

[1] These sections were repealed and supplanted by sections 203–209 of title 18 of the United States Code: see sections 2 and 3 of Public Law 87–849, October 23, 1962 (76 Stat. 1119, 1126).

ment in executive positions in Government during periods of emergency. Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program. The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).[1]

(f) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than $10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

(g) The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act.

SEC. 711. [50 U.S.C. App. 2161] (a) AUTHORIZATION.—Except as provided in subsection (b), there are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act (including sections 302 and 303, but excluding sections 305 and 306) by the President and such agencies as he may designate or create. Funds made available pursuant to this paragraph for the purposes of this Act may be allocated or transferred for any of the purposes of this Act, with the approval of the Office of Management and Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

(b) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years 1996 through 2001, such sums as may be necessary to carry out title III.

[Section 712 repealed by section 153 of P.L. 102–558 (106 Stat. 4219).]

SEC. 713. [50 U.S.C. App. 2163] The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

SEC. 714. [The Small Defense Plants Administration created by this section, added by the Defense Production Act amendments of 1951, was terminated at the close of July 31, 1953, and was succeeded by the Small Business Administration created under the

[1] See footnote on previous page.

Small business Act of 1953. For purposes of section 301(a) of this Act, section 714(a)(1) defined a small-business concern as follows: "* * * a small-business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation," and provided that, "The Administration, in making a detailed definition, may use these criteria, among others: independency of ownership and operation, number of employees, dollar volume of business, and nondominance in its field."]

SEC. 715. [50 U.S.C. App. 2164] If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[Section 716 repealed by section 154 of P.L. 102–558 (106 Stat. 4219).]

SEC. 717. [50 U.S.C. App. 2166] (a) Title I (except section 104), title III, and title VII (except sections 708[1] and 721), and all authority conferred thereunder, shall terminate at the close of September 30, 2001: *Provided,* That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

(b) Notwithstanding the foregoing—

(1) The Congress by concurrent resolution or the President by proclamation may terminate this Act prior to the termination otherwise provided thereof.

(2) The Congress may also provide by concurrent resolution that any section of this Act and all authority conferred thereunder shall terminate prior to the termination otherwise provided therefor.

(3) Any agency created under this Act may be continued in existence for purposes of liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency.

(c) The termination of any section of this Act, or of any agency or corporation utilized under this Act, shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this Act, or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment, or settlement of any loans guaranteed under this Act, including actions deemed necessary to avoid undue hardship to borrowers in recon-

[1] Authority of the President to approve certain voluntary agreements made premanent, May 18, 1971, by 85 Stat. 38.

verting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act shall be applicable to actions taken pursuant to the authority contained in this subsection.

Notwithstanding any other provision of this Act, the termination of title VI or any section thereof shall not be construed as affecting any obligation, condition, liability, or restriction arising out of any agreement heretofore entered into pursuant to, or under the authority of, section 602 or section 605 of this Act, or any issuance thereunder, by any person or corporation and the Federal Government or any agency thereof relating to the provision of housing for defense workers or military personnel in an area designated as a critical defense housing area pursuant to law.

(d) No action for the recovery of any cooperative payment made to a cooperative association by a Market Administrator under an invalid provision of a milk marketing order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937 shall be maintained unless such action is brought by producers specifically named as party plaintiffs to recover their respective share of such payments within ninety days after the date of enactment of the Defense Production Act Amendments of 1952 with respect to any cause of action heretofore accrued and not otherwise barred, or within ninety days after accrual with respect to future payments, and unless each claimant shall allege and prove (1) that he objected at the hearing to the provisions of the order under which such payments were made and (2) that he either refused to accept payments computed with such deduction or accepted them under protest to either the Secretary or the Administrator. The district courts of the United States shall have exclusive original jurisdiction of all such actions regardless of the amount involved. This subsection shall not apply to funds held in escrow pursuant to court order. Notwithstanding any other provision of this Act, no termination date shall be applicable to this subsection.

[Section 718 repealed by section 155 of P.L. 102–558 (106 Stat. 4219).]

[Section 719 repealed by section 5(b) of P.L. 100–679 (102 Stat. 4063).]

[Section 720 repealed by section 156 of P.L. 102–558 (106 Stat. 4219).]

AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

SEC. 721. [50 U.S.C. App. 2170] (a) INVESTIGATIONS.—The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitons, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such

investigation shall be completed no later than 45 days after such determination.

(b) MANDATORY INVESTIGATIONS.—The President or the President's designee shall make an investigation, as described in subsection (a), in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States. Such investigation shall—

(1) commence not later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover, as prescribed by regulations promulgated pursuant to this section; and

(2) shall be completed not later than 45 days after its commencement.

(c) CONFIDENTIALITY OF INFORMATION.—Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(d) ACTION BY THE PRESIDENT.—Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

(e) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by subsection (c) only if the President finds that—

(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

(f) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account

the requirements of national security, consider among other factors—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services,

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security,

(4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

(i) under section 6(j) of the Export Administration Act of 1979, as a country that supports terrorism;

(ii) under section 6(l) of the Export Administration Act of 1979, as a country of concern regarding missile proliferation; or

(iii) under section 6(m) of the Export Administration Act of 1979, as a country of concern regarding the proliferation of chemical and biological weapons; or

(B) listed under section 309(c) of the Nuclear Non-Proliferation Act of 1978 on the "Nuclear Non-Proliferation-Special Country List" (15 C.F.R. Part 778, Supplement No. 4) or any successor list; and

(5) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security.

(g) REPORT TO THE CONGRESS.—The President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the President's determination of whether or not to take action under subsection (d), including a detailed explanation of the findings made under subsection (e) and the factors considered under subsection (f). Such report shall be consistent with the requirements of subsection (c) of this Act.

(h) REGULATIONS.—The President direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(i) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

(j) TECHNOLOGY RISK ASSESSMENTS.—In any case in which an assessment of the risk of diversion of defense critical technology is performed by a designee of the President, a copy of such assessment shall be provided to any other designee of the President responsible for reviewing or investigating a merger, acquisition, or takeover under this section.

(k) QUADRENNIAL REPORT.—

(1) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section and upon the expiration of every 4 years thereafter, a report which—

(A) evaluates whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

(B) evaluates whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

(2) DEFINITION.—For the purposes of this subsection, the term "critical technologies" means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section.

(3) RELEASE OF UNCLASSIFIED STUDY.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

SEC. 722. [50 U.S.C. App. 2171] DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.

(a) ESTABLISHMENT REQUIRED.—

(1) IN GENERAL.—The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

(A) meets the requirements of this section; and

(B) includes a systematic continuous procedure, to collect and analyze information necessary to evaluate—

(i) the adequacy of domestic industrial capacity to furnish critical components and critical technology items essential to the national security of the United States;

(ii) dependence on foreign sources for critical components and critical technology items essential to defense production; and

(iii) the reliability of foreign sources for critical components and critical technology items.

(2) INCORPORATION OF DINET.—The Defense Information Network (or DINET), as established and maintained by the Secretary of Defense on the date of enactment of the Defense Production Act Amendments of 1992, shall be incorporated into the system established pursuant to paragraph (1).

(3) USE OF INFORMATION.—Information collected and analyzed under the procedure established pursuant to paragraph (1) shall constitute a basis for making any determination to

exercise any authority under this Act and a procedure for using such information shall be integrated into the decision-making process with regard to the exercise of any such authority.

(b) SOURCES OF INFORMATION.—

(1) FOREIGN DEPENDENCE.—

(A) SCOPE OF INFORMATION REVIEW.—The procedure established to meet the requirement of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors, or at lower tiers if a critical component is identified at such lower tier.

(B) USE OF EXISTING DATA COLLECTION AND REVIEW CAPABILITIES.—To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

(C) INITIAL EMPHASIS ON PRIORITY LISTS.—In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of critical components and critical technology items.

(2) PRODUCTION BASE ANALYSIS.—

(A) COMPREHENSIVE REVIEW.—The analysis of the production base for any major system acquisition included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—

(i) include a review of all subcontractors and suppliers, beginning with any raw material, special alloy, or composite material involved in the production of a completed system;

(ii) identify each contractor and subcontractor (or supplier) at each level of production for such major system acquisition which represents a potential for delaying or preventing the system's production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a foreign source or sole source contract and any supplier which is a foreign source or sole source for any item required in the production, including critical components; and

(iii) include information to permit appropriate management of accelerated or surge production.

(B) INITIAL REQUIREMENT FOR STUDY OF PRODUCTION BASES FOR NOT MORE THAN 6 MAJOR WEAPON SYSTEMS.—In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2302(5) of title 10, United States Code). Each such analysis shall identify the critical components of each system.

(3) CONSULTATION REGARDING THE CENSUS OF MANUFACTURERS.—

(A) IN GENERAL.—The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency to improve the usefulness of information derived from the Census of Manufacturers in carrying out this section.

(B) ISSUES TO BE ADDRESSED.—The consultation required under subparagraph (A) shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to carry out this section.

(c) STRATEGIC PLAN FOR DEVELOPING COMPREHENSIVE SYSTEM.—

(1) PLAN REQUIRED.—Not later than December 31, 1993, the President shall provide for the establishment of and report to the Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items.

(2) ASSESSMENT OF CERTAIN PROCEDURES.—In establishing the plan pursuant to paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b), and shall seek to build upon such procedures, as appropriate.

(d) CAPABILITIES OF SYSTEM.—

(1) IN GENERAL.—In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate—

(A) to consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system required by this section in a manner which allows the coordinated and efficient entry of information on the domestic defense industrial base into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an online interactive basis by the Department of Defense;

(B) to assure access to the information on the system, as appropriate, for all participating Federal agencies, including each military department;

(C) to coordinate standards, definitions, and specifications for information on defense production, which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department, as the President determines to be appropriate; and

(D) to assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

(2) TASK FORCE ON MILITARY-CIVILIAN PARTICIPATION.—Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting

of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act and chapter 148 of title 10, United States Code.

(e) REPORT ON SUBCONTRACTOR AND SUPPLIER BASE.—

(1) REPORT REQUIRED.—The President shall issue a report (in accordance with paragraph (4) which includes—

(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

(B) an assessment of those subsectors of the economy of the United States which—

(i) support production of any component, technology, or technology item listed pursuant to subparagraph (A); or

(ii) have been identified as being critical to the development and production of components required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

(2) MATTERS TO BE CONSIDERED.—The assessment made under paragraph (1)(B) shall include consideration of—

(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization requirements for various items of supply and services;

(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including—

(i) stability of defense requirements;

(ii) acquisition policies;

(iii) vertical integration of various segments of the industrial base;

(iv) superiority of foreign technology and production efficiencies;

(v) foreign government support of nondomestic sources; and

(vi) offset arrangements.

(3) POLICY RECOMMENDATIONS.—The report required by paragraph (1) may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

(4) TIME FOR ISSUANCE.—The report required by paragraph (1) shall be issued not later than July 1 of each even-numbered year which begins after 1992.

(5) RELEASE OF UNCLASSIFIED REPORT.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

13. SPECIAL ACCESS PROGRAMS

Section 1152 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; approved Nov. 30, 1993)

SEC. 1152. [50 U.S.C. 435 note] REPORTS RELATING TO CERTAIN SPECIAL ACCESS PROGRAMS AND SIMILAR PROGRAMS.

(a) IN GENERAL.—(1) Not later than February 1 of each year, the head of each covered department or agency shall submit to Congress a report on each special access program carried out in the department or agency.

(2) Each such report shall set forth—

(A) the total amount requested by the department or agency for special access programs within the budget submitted under section 1105 of title 31, United States Code, for the fiscal year following the fiscal year in which the report is submitted; and

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

(i) a brief description of the program;

(ii) in the case of a procurement program, 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.

(b) NEWLY DESIGNATED PROGRAMS.—(1) Not later than February 1 of each year, the head of each covered department or agency shall submit to Congress a report that, with respect to each new special access program of that department or agency, 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, as applicable, of existing programs or technologies that are similar to the technology, or that have a mission 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) REVISION IN CLASSIFICATION OF PROGRAMS.—(1) Whenever a change in the classification of a special access program of a covered department or agency is planned to be made or whenever classified information concerning a special access program of a covered department or agency is to be declassified and made public, the head of the department or agency shall submit to Congress a report containing a description of the proposed change or the information to be declassified, the reasons for the proposed change or declassification, and notice of any public announcement planned to be made with respect to the proposed change or declassification.

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

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

(d) REVISION OF CRITERIA FOR DESIGNATING PROGRAMS.—Whenever there is a modification or termination of the policy and criteria used for designating a program of a covered department or agency as a special access program, the head of the department or agency shall promptly notify Congress 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) WAIVER OF REPORTING REQUIREMENT.—(1) The head of a covered department or agency may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the head of the department or agency 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 head of a department or agency exercises the authority provided under paragraph (1), the head of the department or agency shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, to Congress.

(f) INITIATION OF PROGRAMS.—A special access program may not be initiated by a covered department or agency until—

(1) the appropriate oversight committees are notified of the program; and

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

(g) DEFINITIONS.—For purposes of this section:

(1) COVERED DEPARTMENT OR AGENCY.—(A) Except as provided in subparagraph (B), the term "covered department or agency" means any department or agency of the Federal Government that carries out a special access program.

(B) Such term does not include—

(i) the Department of Defense (which is required to submit reports on special access programs under section 119 of title 10, United States Code);

(ii) the National Nuclear Security Administration (which is required to submit reports on special access programs under section 3236 of the National Nuclear Security Administration Act); or

(iii) an agency in the Intelligence Community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a)).

(2) SPECIAL ACCESS PROGRAM.—The term "special access program" means any program that, under the authority of Executive Order 12356 (or any successor Executive order), is established by the head of a department or agency whom the President has designated in the Federal Register as an original "secret" or "top secret" classification authority that imposes "need-to-know" controls or access controls beyond those controls normally required (by regulations applicable to such department or agency) for access to information classified as "confidential", "secret", or "top secret".

14. NATIONAL NUCLEAR SECURITY ADMINISTRATION ACT

Title XXXII of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65, approved Oct. 5, 1999)

TITLE XXXII—NATIONAL NUCLEAR SECURITY ADMINISTRATION

SEC. 3201. [50 U.S.C. 2401 note] SHORT TITLE.

This title may be cited as the "National Nuclear Security Administration Act".

SEC. 3202. UNDER SECRETARY FOR NUCLEAR SECURITY OF DEPARTMENT OF ENERGY.

[Omitted-Amendment]

SEC. 3203. ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION.

[Omitted-Amendment]

SEC. 3204. ORGANIZATION OF DEPARTMENT OF ENERGY COUNTERINTELLIGENCE AND INTELLIGENCE PROGRAMS AND ACTIVITIES.

[Omitted-Amendment]

Subtitle A—Establishment and Organization

SEC. 3211. [50 U.S.C. 2401] ESTABLISHMENT AND MISSION.

(a) ESTABLISHMENT.—There is established within the Department of Energy a separately organized agency to be known as the National Nuclear Security Administration (in this title referred to as the "Administration").

(b) MISSION.—The mission of the Administration shall be the following:

(1) To enhance United States national security through the military application of nuclear energy.

(2) To maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.

(3) To provide the United States Navy with safe, militarily effective nuclear propulsion plants and to ensure the safe and reliable operation of those plants.

(4) To promote international nuclear safety and nonproliferation.

(5) To reduce global danger from weapons of mass destruction.

(6) To support United States leadership in science and technology.

(c) OPERATIONS AND ACTIVITIES TO BE CARRIED OUT CONSISTENT WITH CERTAIN PRINCIPLES.—In carrying out the mission of

the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.

SEC. 3212. [50 U.S.C. 2402] ADMINISTRATOR FOR NUCLEAR SECURITY.

(a) IN GENERAL.—(1) There is at the head of the Administration an Administrator for Nuclear Security (in this title referred to as the "Administrator").

(2) Pursuant to subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of this Act, the Under Secretary for Nuclear Security of the Department of Energy serves as the Administrator.

(b) FUNCTIONS.—The Administrator has authority over, and is responsible for, all programs and activities of the Administration (except for the functions of the Deputy Administrator for Naval Reactors specified in the Executive order referred to in section 3216(b)), including the following:

(1) Strategic management.

(2) Policy development and guidance.

(3) Budget formulation, guidance, and execution, and other financial matters.

(4) Resource requirements determination and allocation.

(5) Program management and direction.

(6) Safeguards and security.

(7) Emergency management.

(8) Integrated safety management.

(9) Environment, safety, and health operations.

(10) Administration of contracts, including the management and operations of the nuclear weapons production facilities and the national security laboratories.

(11) Intelligence.

(12) Counterintelligence.

(13) Personnel, including the selection, appointment, distribution, supervision, establishing of compensation, and separation of personnel in accordance with subtitle C of this title.

(14) Procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(15) Legal matters.

(16) Legislative affairs.

(17) Public affairs.

(18) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

(c) PROCUREMENT AUTHORITY.—The Administrator is the senior procurement executive for the Administration for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(d) POLICY AUTHORITY.—The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.

(e) [1] MEMBERSHIP ON JOINT NUCLEAR WEAPONS COUNCIL.—The Administrator serves as a member of the Joint Nuclear Weapons Council under section 179 of title 10, United States Code.

(e) [2] REORGANIZATION AUTHORITY.—Except as provided by subsections (b) and (c) of section 3291:

(1) The Administrator may establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the Administration, or transfer any function of the Administration.

(2) Such authority does not apply to the abolition of organizational units or components established by law or the transfer of functions vested by law in any organizational unit or component.

SEC. 3213. [50 U.S.C. 2403] STATUS OF ADMINISTRATION AND CONTRACTOR PERSONNEL WITHIN DEPARTMENT OF ENERGY.

(a) STATUS OF ADMINISTRATION PERSONNEL.—Each officer or employee of the Administration—

(1) shall be responsible to and subject to the authority, direction, and control of—

(A) the Secretary acting through the Administrator and consistent with section 202(c)(3) of the Department of Energy Organization Act;

(B) the Administrator; or

(C) the Administrator's designee within the Administration; and

(2) shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.

(b) STATUS OF CONTRACTOR PERSONNEL.—Each officer or employee of a contractor of the Administration shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the Administration, except for the Secretary of Energy consistent with section 202(c)(3) of the Department of Energy Organization Act.

(c) CONSTRUCTION OF SECTION.—Subsections (a) and (b) may not be interpreted to in any way preclude or interfere with the communication of technical findings derived from, and in accord with, duly authorized activities between (1) the head, or any contractor employee, of a national security laboratory or of a nuclear weapons production facility, and (2) the Department of Energy, the President, or Congress.

(d) PROHIBITION ON DUAL OFFICE HOLDING.—Except in accordance with sections 3212(a)(2) and 3216(a)(1):

(1) An individual may not concurrently hold or carry out the responsibilities of—

(A) a position within the Administration; and

---

[1] The first subsection (e) was added by section 3152(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–464).

[2] The second subsection (e) was added by section 3159(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–469).

(B) a position within the Department of Energy not within the Administration.

(2) No funds appropriated or otherwise made available for any fiscal year may be used to pay, to an individual who concurrently holds or carries out the responsibilities of a position specified in paragraph (1)(A) and a position specified in paragraph (1)(B), the basic pay, salary, or other compensation relating to any such position.

SEC. 3214. [50 U.S.C. 2404] DEPUTY ADMINISTRATOR FOR DEFENSE PROGRAMS.

(a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Programs, who is appointed by the President, by and with the advice and consent of the Senate.

(b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Programs shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

(1) Maintaining and enhancing the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.

(2) Directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories.

(3) Directing, managing, and overseeing assets to respond to incidents involving nuclear weapons and materials.

(c) RELATIONSHIP TO LABORATORIES AND FACILITIES.—The head of each national security laboratory and nuclear weapons production facility shall, consistent with applicable contractual obligations, report to the Deputy Administrator for Defense Programs.

SEC. 3215. [50 U.S.C. 2405] DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION.

(a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Nuclear Nonproliferation, who is appointed by the President, by and with the advice and consent of the Senate.

(b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Nuclear Nonproliferation shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

(1) Preventing the spread of materials, technology, and expertise relating to weapons of mass destruction.

(2) Detecting the proliferation of weapons of mass destruction worldwide.

(3) Eliminating inventories of surplus fissile materials usable for nuclear weapons.

(4) Providing for international nuclear safety.

SEC. 3216. [50 U.S.C. 2406] DEPUTY ADMINISTRATOR FOR NAVAL REACTORS.

(a) IN GENERAL.—(1) There is in the Administration a Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order shall serve as the Deputy Administrator for Naval Reactors.

(2) Within the Department of Energy, the Deputy Administrator shall report to the Secretary of Energy through the Administrator and shall have direct access to the Secretary and other senior officials in the Department.

(b) DUTIES.—The Deputy Administrator shall be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under the Naval Nuclear Propulsion Executive Order.

(c) EFFECT ON EXECUTIVE ORDER.—Except as otherwise specified in this section and notwithstanding any other provision of this title, the provisions of the Naval Nuclear Propulsion Executive Order remain in full force and effect until changed by law.

(d) NAVAL NUCLEAR PROPULSION EXECUTIVE ORDER.—As used in this section, the Naval Nuclear Propulsion Executive Order is Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 42 U.S.C. 7158 note)).

SEC. 3217. [50 U.S.C. 2407] GENERAL COUNSEL.

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.

SEC. 3218. [50 U.S.C. 2408] STAFF OF ADMINISTRATION.

(a) IN GENERAL.—The Administrator shall maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties and responsibilities of the Administrator.

(b) RESPONSIBILITIES.—The staff of the Administration shall perform, in accordance with applicable law, such of the functions of the Administrator as the Administrator shall prescribe. The Administrator shall assign to the staff responsibility for the following functions:

(1) Personnel.

(2) Legislative affairs.

(3) Public affairs.

(4) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

SEC. 3219. [50 U.S.C. 2409] SCOPE OF AUTHORITY OF SECRETARY OF ENERGY TO MODIFY ORGANIZATION OF ADMINISTRATION.

Notwithstanding the authority granted by section 643 of the Department of Energy Organization Act (42 U.S.C. 7253) or any other provision of law, the Secretary of Energy may not establish, abolish, alter, consolidate, or discontinue any organizational unit or component, or transfer any function, of the Administration, except as authorized by subsection (b) or (c) of section 3291.

Subtitle B—Matters Relating to Security

SEC. 3231. [50 U.S.C. 2421] PROTECTION OF NATIONAL SECURITY INFORMATION.

(a) POLICIES AND PROCEDURES REQUIRED.—The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

(b) PROMPT REPORTING.—The Administrator shall establish procedures to ensure prompt reporting to the Administrator of any significant problem, abuse, violation of law or Executive order, or deficiency relating to the management of classified information by personnel of the Administration.

SEC. 3232. [50 U.S.C. 2422] OFFICE OF DEFENSE NUCLEAR COUNTERINTELLIGENCE AND OFFICE OF DEFENSE NUCLEAR SECURITY.

(a) ESTABLISHMENT.—(1) There are within the Administration—

(A) an Office of Defense Nuclear Counterintelligence; and

(B) an Office of Defense Nuclear Security.

(2) Each office established under paragraph (1) shall be headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for each such position.

(b) CHIEF OF DEFENSE NUCLEAR COUNTERINTELLIGENCE.—(1) The head of the Office of Defense Nuclear Counterintelligence is the Chief of Defense Nuclear Counterintelligence, who shall report to the Administrator and shall implement the counterintelligence policies directed by the Secretary and Administrator.

(2) The Secretary shall appoint the Chief, in consultation with the Director of the Federal Bureau of Investigation, from among individuals who have special expertise in counterintelligence. If an individual to serve as the Chief of Defense Nuclear Counterintelligence is a Federal employee of an entity other than the Administration, the service of that employee as Chief shall not result in any loss of employment status, right, or privilege by that employee.

(3) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning counterintelligence matters.

(4) The Chief shall be responsible for—

(A) the development and implementation of the counterintelligence programs of the Administration to prevent the disclosure or loss of classified or other sensitive information; and

(B) the development and administration of personnel assurance programs within the Administration.

(c) CHIEF OF DEFENSE NUCLEAR SECURITY.—(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

(2) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning security matters.

(3) The Chief shall be responsible for the development and implementation of security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.

SEC. 3233. [50 U.S.C. 2423] COUNTERINTELLIGENCE PROGRAMS.

(a) NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES.—The Administrator shall, at each national security laboratory and nuclear weapons production facility,

establish and maintain a counterintelligence program adequate to protect national security information at that laboratory or production facility.

(b) OTHER FACILITIES.—The Administrator shall, at each Administration facility not described in subsection (a) at which Restricted Data is located, assign an employee of the Office of Defense Nuclear Counterintelligence who shall be responsible for and assess counterintelligence matters at that facility.

SEC. 3234. [50 U.S.C. 2424] PROCEDURES RELATING TO ACCESS BY INDIVIDUALS TO CLASSIFIED AREAS AND INFORMATION OF ADMINISTRATION.

The Administrator shall establish appropriate procedures to ensure that any individual is not permitted unescorted access to any classified area, or access to classified information, of the Administration until that individual has been verified to hold the appropriate security clearances.

SEC. 3235. [50 U.S.C. 2425] GOVERNMENT ACCESS TO INFORMATION ON ADMINISTRATION COMPUTERS.

(a) PROCEDURES REQUIRED.—The Administrator shall establish procedures to govern access to information on Administration computers. Those procedures shall, at a minimum, provide that any individual who has access to information on an Administration computer shall be required as a condition of such access to provide to the Administrator written consent which permits access by an authorized investigative agency to any Administration computer used in the performance of the duties of such employee during the period of that individual's access to information on an Administration computer and for a period of three years thereafter.

(b) EXPECTATION OF PRIVACY IN ADMINISTRATION COMPUTERS.—Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no user of an Administration computer shall have any expectation of privacy in the use of that computer.

(c) DEFINITION.—For purposes of this section, the term "authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

SEC. 3236. [50 U.S.C. 2426] CONGRESSIONAL OVERSIGHT OF SPECIAL ACCESS PROGRAMS.

(a) ANNUAL REPORT ON SPECIAL ACCESS PROGRAMS.—(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report on special access programs of the Administration.

(2) Each such report shall set forth—

(A) the total amount requested for such programs in the President's budget for the next fiscal year submitted under section 1105 of title 31, United States Code; and

(B) for each such program in that budget, the following:

(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.

(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.

(b) ANNUAL REPORT ON NEW SPECIAL ACCESS PROGRAMS.—(1) Not later than February 1 of each year, the Administrator shall submit to the congressional 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) REPORTS ON CHANGES IN CLASSIFICATION OF SPECIAL ACCESS PROGRAMS.—(1) Whenever a change in the classification of a special access program of the Administration is planned to be made or whenever classified information concerning a special access program of the Administration is to be declassified and made public, the Administrator shall submit to the congressional 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 Administrator 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 Administration, the Administrator 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) NOTICE OF CHANGE IN SAP DESIGNATION CRITERIA.—Whenever there is a modification or termination of the policy and criteria used for designating a program of the Administration as a special access program, the Administrator shall promptly notify the congressional 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) WAIVER AUTHORITY.—(1) The Administrator may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Administrator determines that inclusion of that information in the report would adversely affect the national security. The Administrator may waive the report-and-wait requirement in subsection (f) if the Administrator determines that compliance with such requirement would adversely affect the national security. Any waiver under this paragraph shall be made on a case-by-case basis.

(2) If the Administrator exercises the authority provided under paragraph (1), the Administrator 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 congressional defense committees.

(f) REPORT AND WAIT FOR INITIATING NEW PROGRAMS.—A special access program may not be initiated until—

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

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

Subtitle C—Matters Relating to Personnel

SEC. 3241. [50 U.S.C. 2441] AUTHORITY TO ESTABLISH CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL POSITIONS.

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this title, establish not more than 300 scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitations in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to, and subject to the limitations of, the authority under section 161 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(d)) to make appointments and fix compensation with respect to officers and employees described in such section.

SEC. 3242. [50 U.S.C. 2442] VOLUNTARY EARLY RETIREMENT AUTHORITY.

(a) AUTHORITY.—An employee of the Department of Energy who is separated from the service under conditions described in subsection (b) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity in accordance with the provisions in chapter 83 or 84 of title 5, United States Code, as applicable.

(b) CONDITIONS OF SEPARATION.—Subsection (a) applies to an employee who—

(1) has been employed continuously by the Department of Energy for more than 30 days before the date on which the Secretary of Energy makes the determination required under paragraph (4)(A);

(2) is serving under an appointment that is not limited by time;

(3) has not received a decision notice of involuntary separation for misconduct or unacceptable performance that is pending decision; and

(4) is separated from the service voluntarily during a period with respect to which—

(A) the Secretary of Energy determines that the Department of Energy is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration; and

(B) the employee is within the scope of an offer of voluntary early retirement (as defined by organizational unit, occupational series or level, geographical location, any other similar factor that the Office of Personnel Management determines appropriate, or any combination of such definitions of scope), as determined by the Secretary under regulations prescribed by the Office.

(c) TREATMENT OF EMPLOYEES.—For purposes of chapters 83 and 84 of title 5, United States Code (including for purposes of computation of an annuity under such chapters), an employee entitled to an annuity under this section shall be treated as an employee entitled to an annuity under section 8336(d) or 8414(b) of such title, as applicable.

(d) DEFINITIONS.—As used in this section, the terms "employee" and "annuity"—

(1) with respect to individuals covered by the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code, have the meaning of such terms as used in such chapter; and

(2) with respect to individuals covered by the Federal Employees Retirement System established in chapter 84 of such title, have the meaning of such terms as used in such chapter.

(e) LIMITATION AND TERMINATION OF AUTHORITY.—The authority provided in subsection (a)—

(1) may be applied with respect to a total of not more than 600 employees of the Department of Energy; and

(2) shall expire on September 30, 2003.

SEC. 3243. SEVERANCE PAY.

[Omitted-Amendment]

SEC. 3244. CONTINUED COVERAGE OF HEALTH CARE BENEFITS.

[Omitted-Amendment]

SEC. 3245. [50 U.S.C. 2443] PROHIBITION ON PAY OF PERSONNEL ENGAGED IN CONCURRENT SERVICE OR DUTIES INSIDE AND OUTSIDE ADMINISTRATION.

(a) Except as otherwise expressly provided by statute, no funds authorized to be appropriated or otherwise made available for the Department of Energy may be obligated or utilized to pay the basic pay of an officer or employee of the Department of Energy who—

(1) serves concurrently in a position in the Administration and a position outside the Administration; or

(2) performs concurrently the duties of a position in the Administration and the duties of a position outside the Administration.

(b) The provision of this section shall take effect 60 days after the date of enactment of this section.

Subtitle D—Budget and Financial Management

SEC. 3251. [50 U.S.C. 2451] SEPARATE TREATMENT IN BUDGET.

(a) PRESIDENT'S BUDGET.—In each budget submitted by the President to the Congress under section 1105 of title 31, United States Code, amounts requested for the Administration shall be set forth separately within the other amounts requested for the Department of Energy.

(b) BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of each such budget, the amounts requested for the Administration shall be specified in individual, dedicated program elements.

SEC. 3252. [50 U.S.C. 2452] PLANNING, PROGRAMMING, AND BUDGETING PROCESS.

(a) PROCEDURES REQUIRED.—The Administrator shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Administration comport with sound financial and fiscal management principles. Those procedures shall, at a minimum, provide for the planning, programming, and budgeting of activities of the Administration using funds that are available for obligation for a limited number of years.

(b) ANNUAL PLAN FOR OBLIGATION OF FUNDS.—(1) Each year, the Administrator shall prepare a plan for the obligation of the amounts that, in the President's budget submitted to Congress that year under section 1105(a) of title 31, United States Code, are proposed to be appropriated for the Administration for the fiscal year that begins in that year (in this section referred to as the "budget year") and the two succeeding fiscal years.

(2) For each program element and construction line item of the Administration, the plan shall provide the goal of the Administration for the obligation of those amounts for that element or item for each fiscal year of the plan, expressed as a percentage of the total amount proposed to be appropriated in that budget for that element or item.

(c) SUBMISSION OF PLAN AND REPORT.—The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress under section 1105(a) of title 31, United States Code, each of the following:

(1) The plan required by subsection (b) prepared with respect to that budget.

(2) A report on the plans prepared with respect to the preceding years' budgets, which shall include, for each goal provided in those plans—

(A) the assessment of the Administrator as to whether or not that goal was met; and

(B) if that assessment is that the goal was not met—

(i) the reasons why that goal was not met; and

(ii) the plan of the Administrator for meeting or, if necessary, adjusting that goal.

SEC. 3253. [50 U.S.C. 2453] FUTURE-YEARS NUCLEAR SECURITY PROGRAM.

(a) SUBMISSION TO CONGRESS.—The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, United States Code, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b) ELEMENTS.—Each future-years nuclear security program shall contain the following:

(1) A detailed description of the program elements (and the projects, activities, and construction projects associated with each such program element) during the applicable five-fiscal year period for at least each of the following:

(A) For defense programs—

(i) directed stockpile work;

(ii) campaigns;

(iii) readiness in technical base and facilities; and

(iv) secure transportation asset.

(B) For defense nuclear nonproliferation—

(i) nonproliferation and verification, research, and development;

(ii) arms control; and

(iii) fissile materials disposition.

(C) For naval reactors, naval reactors operations and maintenance.

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support each program element specified pursuant to paragraph (1).

(3) A detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal year period will help ensure that the nuclear weapons stockpile is safe and reliable, as determined in accordance with the criteria established under section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note).

(4) A description of the anticipated workload requirements for each Administration site during that five-fiscal year period.

(c) CONSISTENCY IN BUDGETING.—(1) The Administrator 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 Administrator in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section

1105(a) of title 31, United States Code, for any fiscal year, as shown in the future-years nuclear security 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 Administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

(d) TREATMENT OF MANAGEMENT CONTINGENCIES.—Nothing in this section shall be construed to prohibit the inclusion in the future-years nuclear security program of amounts for management contingencies, subject to the requirements of subsection (c).

Subtitle E—Miscellaneous Provisions

SEC. 3261. [50 U.S.C. 2461] ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

(a) COMPLIANCE REQUIRED.—The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

(b) PROCEDURES REQUIRED.—The Administrator shall develop procedures for meeting such requirements.

(c) RULE OF CONSTRUCTION.—Nothing in this title shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.

SEC. 3262. [50 U.S.C. 2462] COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.

The Administrator shall establish procedures to ensure that the mission and programs of the Administration are executed in full compliance with all applicable provisions of the Federal Acquisition Regulation issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

SEC. 3263. [50 U.S.C. 2463] SHARING OF TECHNOLOGY WITH DEPARTMENT OF DEFENSE.

The Administrator shall, in cooperation with the Secretary of Defense, establish procedures and programs to provide for the sharing of technology, technical capability, and expertise between the Administration and the Department of Defense to further national security objectives.

SEC. 3264. [50 U.S.C. 2464] USE OF CAPABILITIES OF NATIONAL SECURITY LABORATORIES BY ENTITIES OUTSIDE THE ADMINISTRATION.

The Secretary, in consultation with the Administrator, shall establish appropriate procedures to provide for the use, in a manner consistent with the national security mission of the Administration under section 3211(b), of the capabilities of the national security laboratories by elements of the Department of Energy not within the Administration, other Federal agencies, and other appropriate entities, including the use of those capabilities to support efforts to defend against weapons of mass destruction.

Subtitle F—Definitions

SEC. 3281. [50 U.S.C. 2471] DEFINITIONS.

For purposes of this title:

(1) The term "national security laboratory" means any of the following:

(A) Los Alamos National Laboratory, Los Alamos, New Mexico.

(B) Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(C) Lawrence Livermore National Laboratory, Livermore, California.

(2) The term "nuclear weapons production facility" means any of the following:

(A) The Kansas City Plant, Kansas City, Missouri.

(B) The Pantex Plant, Amarillo, Texas.

(C) The Y–12 Plant, Oak Ridge, Tennessee.

(D) The tritium operations facilities at the Savannah River Site, Aiken, South Carolina.

(E) The Nevada Test Site, Nevada.

(F) Any facility of the Department of Energy that the Secretary of Energy, in consultation with the Administrator and the Congress, determines to be consistent with the mission of the Administration.

(3) The term "classified information" means any information that has been determined pursuant to Executive Order No. 12333 of December 4, 1981 (50 U.S.C. 401 note), Executive Order No. 12958 of April 17, 1995 (50 U.S.C. 435 note), or successor orders, to require protection against unauthorized disclosure and that is so designated.

(4) The term "Restricted Data" has the meaning given such term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(5) 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.

Subtitle G—Amendatory Provisions, Transition Provisions, and Effective Dates

SEC. 3291. [50 U.S.C. 2481] FUNCTIONS TRANSFERRED.

(a) TRANSFERS.—There are hereby transferred to the Administrator all national security functions and activities performed immediately before the date of the enactment of this Act by the following elements of the Department of Energy:

(1) The Office of Defense Programs.

(2) The Office of Nonproliferation and National Security.

(3) The Office of Fissile Materials Disposition.

(4) The nuclear weapons production facilities.

(5) The national security laboratories.

(6) The Office of Naval Reactors.

(b) AUTHORITY TO TRANSFER ADDITIONAL FUNCTIONS.—The Secretary of Energy may transfer to the Administrator any other facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.

(c) ENVIRONMENTAL REMEDIATION AND WASTE MANAGEMENT ACTIVITIES.—In the case of any environmental remediation and waste management activity of any element specified in subsection (a), the Secretary of Energy may determine to transfer responsibility for that activity to another element of the Department.

SEC. 3292. [50 U.S.C. 2482] TRANSFER OF FUNDS AND EMPLOYEES.

(a) TRANSFER OF FUNDS.—(1) Any balance of appropriations that the Secretary of Energy determines is available and needed to finance or discharge a function, power, or duty or an activity that is transferred to the Administration shall be transferred to the Administration and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(A) be credited to any applicable appropriation account of the Administration; or

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

and shall be merged with the funds already credited to that account and accounted for as one fund.

(2) Balances of appropriations credited to an account under paragraph (1)(A) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) PERSONNEL.—(1) With respect to any function, power, or duty or activity of the Department of Energy that is transferred to the Administration, those employees of the element of the Department of Energy from which the transfer is made that the Secretary of Energy determines are needed to perform that function, power, or duty, or for that activity, as the case may be, shall be transferred to the Administration.

(2) The authorized strength in civilian employees of any element of the Department of Energy from which employees are transferred under this section is reduced by the number of employees so transferred.

SEC. 3293. PAY LEVELS.

[Omitted-Amendment]

SEC. 3294. CONFORMING AMENDMENTS.

[Omitted-Amendment]

SEC. 3295. [50 U.S.C. 2483] TRANSITION PROVISIONS.

(a) COMPLIANCE WITH FINANCIAL PRINCIPLES.—(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with sound financial and fiscal management principles specified in section 3252 is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with those principles not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a

report containing the results of that review and a description of that plan.

(b) INITIAL REPORT FOR FUTURE-YEARS NUCLEAR SECURITY PROGRAM.—The first report under section 3253 shall be submitted in conjunction with the budget submitted for fiscal year 2001.

(c) PROCEDURES FOR COMPUTER ACCESS.—The regulations to implement the procedures under section 3235 shall be prescribed not later than 90 days after the effective date of this title.

(d) COMPLIANCE WITH FAR.—(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with the Federal Acquisition Regulation specified in section 3262 is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with the Federal Acquisition Regulation not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

SEC. 3296. [50 U.S.C. 2484] APPLICABILITY OF PREEXISTING LAWS AND REGULATIONS.

Unless otherwise provided in this title, all provisions of law and regulations in effect immediately before the effective date of this title that are applicable to functions of the Department of Energy specified in section 3291 shall continue to apply to the corresponding functions of the Administration.

SEC. 3297. [50 U.S.C. 2401 note] REPORT CONTAINING IMPLEMENTATION PLAN OF SECRETARY OF ENERGY.

Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary's plan for the implementation of the provisions of this title.

SEC. 3298. [50 U.S.C. 2401 note] CLASSIFICATION IN UNITED STATES CODE.

Subtitles A through F of this title (other than provisions of those subtitles amending existing provisions of law) shall be classified to the United States Code as a new chapter of title 50, United States Code.

SEC. 3299. [50 U.S.C. 2401 note] EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this title shall take effect on March 1, 2000.

(b) EXCEPTIONS.—(1) Sections 3202, 3204, 3251, 3295, and 3297 shall take effect on the date of the enactment of this Act.

(2) Sections 3234 and 3235 shall take effect on the date of the enactment of this Act. During the period beginning on the date of the enactment of this Act and ending on the effective date of this title, the Secretary of Energy shall carry out those sections and any reference in those sections to the Administrator and the Adminis-

tration shall be treated as references to the Secretary and the Department of Energy, respectively.

C. PERSONNEL MATTERS

1. PROVISIONS REGARDING POWS AND MIAS

a. Provision of Funeral Transportation and Living Expense Benefits to the Families of Deceased Prisoners of War

(Public Law 93–257; approved March 29, 1974; 37 U.S.C. 406 note)

SHORT TITLE

SECTION 1. This Act may be cited as the "Funeral Transportation and Living Expense Benefits Act of 1974".

FINDINGS

SEC. 2. (a) The United States did in 1973 provide transportation and other amenities to families of five hundred and fifty-six returned prisoners of war for reunions upon these men's arrival in the continental United States after release from imprisonment by the government of the Democratic Republic of Vietnam and did in 1973 also provide transportation and other amenities to these returned prisoners of war and their families to attend ceremonies in their honor in Washington, District of Columbia.

(b) The remains of other prisoners of war, having died in captivity in Southeast Asia, are now being returned to the United States for burial.

(c) The United States owes no lesser degree of respect, honor or solicitude to the memories of the men who died in captivity and their families than in the cases of those who survived and returned alive to the United States.

(d) It is fitting and proper, therefore, as a mark of respect to those men who died in captivity while serving in the Armed Forces of the United States, that comparable courtesies and amenities be extended to the families of these deceased military personnel.

BENEFITS

SEC. 3. (a) The Secretary of Defense is authorized to provide funeral transportation and living expenses benefits for the family of any deceased member of the Armed Forces who shall have died while classified as a prisoner of war or as missing in action during the Vietnam conflict and whose remains shall have been returned to the United States after January 27, 1973.

(b) Such benefits shall include transportation roundtrip from such family members' places of residence to the place of burial for

such deceased member of the Armed Forces, living expenses and other such allowances as the Secretary shall deem appropriate.

(c) Eligible family members shall include the deceased's widow, children, stepchildren, mother, father, stepfather and stepmother, or if none of these shall desire to be granted such benefits, the deceased's brothers, sisters, halfbrothers and halfsisters.

---

b. Sections 1082 through 1084 of the National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190; approved Dec. 5, 1991)

SEC. 1082. [50 U.S.C. 401 note] DISCLOSURE OF INFORMATION CONCERNING UNACCOUNTED FOR UNITED STATES PERSONNEL OF THE COLD WAR, THE KOREAN CONFLICT, AND THE VIETNAM ERA.

(a) PUBLIC AVAILABILITY OF INFORMATION.—(1) Except as provided in subsection (b), the Secretary of Defense shall, with respect to any information referred to in paragraph (2), place the information in a suitable library-like location within a facility within the National Capital region for public review and photocopying.

(2) Paragraph (1) applies to any record, live-sighting report, or other information in the custody of the official custodian referred to in subsection (d)(3) that may pertain to the location, treatment, or condition of (A) United States personnel who remain not accounted for as a result of service in the Armed Forces or other Federal Government service during the Korean conflict, the Vietnam era, or the Cold War, or (B) their remains.

(b) EXCEPTIONS.—(1) The Secretary of Defense may not make a record or other information available to the public pursuant to subsection (a) if—

(A) the record or other information is exempt from the disclosure requirements of section 552 of title 5, United States Code, by reason of subsection (b) of that section; or

(B) the record or other information is in a system of records exempt from the requirements of subsection (d) of section 552a of such title pursuant to subsection (j) or (k) of that section.

(2) The Secretary of Defense may not make a record or other information available to the public pursuant to subsection (a) if the record or other information specifically mentions a person by name unless—

(A) in the case of a person who is alive (and not incapacitated) and whose whereabouts are known, that person expressly consents in writing to the disclosure of the record or other information; or

(B) in the case of a person who is dead or incapacitated or whose whereabouts are unknown, a family member or family members of that person determined by the Secretary of Defense to be appropriate for such purpose expressly consent in writing to the disclosure of the record or other information.

(3)(A) The limitation on disclosure in paragraph (2) does not apply in the case of a person who is dead or incapacitated or whose whereabouts are unknown if the family member or members of

that person determined pursuant to subparagraph (B) of that paragraph cannot be located by the Secretary of Defense—

(i) in the case of a person missing from the Vietnam era, after a reasonable effort; and

(ii) in the case of a person missing from the Korean Conflict or Cold War, after a period of 90 days from the date on which any record or other information referred to in paragraph (2) is received by the Department of Defense for disclosure review from the Archivist of the United States, the Library of Congress, or the Joint United States-Russian Commission on POW/MIAs.

(B) Paragraph (2) does not apply to the access of an adult member of the family of a person to any record or information to the extent that the record or other information relates to that person.

(C) The authority of a person to consent to disclosure of a record or other information for the purposes of paragraph (2) may be delegated to another person or an organization only by means of an express legal power of attorney granted by the person authorized by that paragraph to consent to the disclosure.

(c) DEADLINES.—(1) In the case of records or other information originated by the Department of Defense, the official custodian shall make such records and other information available to the public pursuant to this section not later than January 2, 1996. Such records or other information shall be made available as soon as a review carried out for the purposes of subsection (b) is completed.

(2) Whenever, a department or agency of the Federal Government receives any record or other information referred to in subsection (a) that is required by this section to be made available to the public, the head of that department or agency shall ensure that such record or other information is provided to the Secretary of Defense, and the Secretary shall make such record or other information available in accordance with subsection (a) as soon as possible and, in any event, not later than one year after the date on which the record or information is received by the department or agency of the Federal Government.

(3) If the Secretary of Defense determines that the disclosure of any record or other information referred to in subsection (a) by the date required by paragraph (1) or (2) may compromise the safety of any United States personnel referred to in subsection (a)(2) who remain not accounted for but who may still be alive in captivity, then the Secretary may withhold that record or other information from the disclosure otherwise required by this section. Whenever the Secretary makes a determination under the preceding sentence, the Secretary shall immediately notify the President and the Congress of that determination.

(d) DEFINITIONS.—For purposes of this section:

(1) The terms "Korean conflict" and "Vietnam era" have the meanings given those terms in section 101 of title 38, United States Code.

(2) The term "Cold War" means the period from the end of World War II to the beginning of the Korean conflict and the

period from the end of the Korean conflict to the beginning of the Vietnam era.

(3) The term "official custodian" means—

(A) in the case of records, reports, and information relating to the Korean conflict or the Cold War, the Archivist of the United States; and

(B) in the case of records, reports, and information relating to the Vietnam era, the Secretary of Defense.

SEC. 1083. [10 U.S.C. 113 note] FAMILY SUPPORT CENTER FOR FAMILIES OF PRISONERS OF WAR AND PERSONS MISSING IN ACTION.

(a) REQUEST FOR ESTABLISHMENT.—The President is authorized and requested to establish in the Department of Defense a family support center to provide information and assistance to members of the families of persons who at any time while members of the Armed Forces were classified as prisoners of war or missing in action in Southeast Asia and who have not been accounted for. Such a support center should be located in a facility in the National Capital region.

(b) DUTIES.—The center should be organized and provided with such personnel as necessary to permit the center to assist family members referred to in subsection (a) in contacting the departments and agencies of the Federal Government having jurisdiction over matters relating to such persons.

SEC. 1084. DISPLAY OF POW/MIA FLAG.

[Repealed by section 1082(j) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1918).]

---

c. Subtitle D of title X of the National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337; approved Oct. 5, 1994)

Subtitle D—POW/MIA Matters

SEC. 1031. [10 U.S.C. 113 note] ASSISTANCE TO FAMILY MEMBERS OF KOREAN CONFLICT AND COLD WAR POW/MIAS WHO REMAIN UNACCOUNTED FOR.

(a) SINGLE POINT OF CONTACT.—The Secretary of Defense shall designate an official of the Department of Defense to serve as a single point of contact within the department—

(1) for the immediate family members (or their designees) of any unaccounted-for Korean conflict POW/MIA; and

(2) for the immediate family members (or their designees) of any unaccounted-for Cold War POW/MIA.

(b) FUNCTIONS.—The official designated under subsection (a) shall serve as a liaison between the family members of unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs and the Department of Defense and other Federal departments and agencies that may hold information that may relate to such POW/MIAs. The functions of that official shall include assisting family members—

(1) with the procedures the family members may follow in their search for information about the unaccounted-for Korean

conflict POW/MIA or unaccounted-for Cold War POW/MIA, as the case may be;

(2) in learning where they may locate information about the unaccounted-for POW/MIA; and

(3) in learning how and where to identify classified records that contain pertinent information and that will be declassified.

(c) ASSISTANCE IN OBTAINING DECLASSIFICATION.—The official designated under subsection (a) shall seek to obtain the rapid declassification of any relevant classified records that are identified.

(d) REPOSITORY.—The official designated under subsection (a) shall provide all documents relating to unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs that are located as a result of the official's efforts to the National Archives and Records Administration, which shall locate them in a centralized repository.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "unaccounted-for Korean conflict POW/MIA" means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the Korean conflict, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

(2) The term "unaccounted-for Cold War POW/MIA" means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the period from September 2, 1945, to August 21, 1991, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

(3) The term "Korean conflict" has the meaning given such term in section 101(9) of title 38, United States Code.

SEC. 1032. REQUIREMENT FOR SECRETARY OF DEFENSE TO SUBMIT RECOMMENDATIONS ON CERTAIN PROVISIONS OF LAW CONCERNING MISSING PERSONS.

(a) REVIEW.—The Secretary of Defense shall conduct a review of the provisions of chapter 10 of title 37, United States Code, relating to missing persons.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report containing the Secretary's recommendations as to whether those provisions of law should be amended.

(c) CONSULTATION.—The review under subsection (a) shall be carried out in consultation with the Secretaries of the military departments.

SEC. 1033. CONTACT BETWEEN THE DEPARTMENT OF DEFENSE AND THE MINISTRY OF NATIONAL DEFENSE OF CHINA ON POW/MIA ISSUES.

(a) FINDINGS.—Congress makes the following findings:

(1) The Select Committee on POW/MIA Affairs of the Senate, in its final report, dated January 13, 1993, concluded—

(A) that "many American POWs had been held in China during the Korean conflict and that foreign POW camps in both China and North Korea were run by Chinese officials"; and

(B) that "given the fact that only 26 Army and 15 Air Force personnel returned from China following the war, the committee can now firmly conclude that the People's Republic of China surely has information on the fate of other unaccounted for American POWs from the Korean conflict.".

(2) The Select Committee on POW/MIA Affairs recommended in that report that "the Department of State and Defense form a POW/MIA task force on China similar to Task Force Russia.".

(3) Neither the Department of Defense nor the Department of State has held substantive discussions with officials from the People's Republic of China concerning unaccounted for American prisoners of war of the Korean conflict.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should establish contact with officials of the Ministry of Defense of the People's Republic of China regarding unresolved issues relating to American prisoners of war and American personnel missing in action as a result of the Korean conflict.

SEC. 1034. INFORMATION CONCERNING UNACCOUNTED FOR UNITED STATES PERSONNEL OF THE VIETNAM CONFLICT.

(a) REQUIREMENT.—Not later than 45 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report containing the information specified in subsection (b) pertaining to United States personnel involved in the Vietnam conflict who remain not accounted for.

(b) REQUIRED INFORMATION.—The information to be provided in the report under subsection (a) is as follows:

(1) A complete listing by name of all such personnel about whom it is possible that officials of the Socialist Republic of Vietnam can produce additional information or remains that could lead to the maximum possible accounting for those personnel, as determined on the basis of all information available to the United States Government.

(2) A complete listing by name of all such personnel about whom it is possible that officials of the Lao People's Democratic Republic can produce additional information or remains that could lead to the maximum possible accounting for those personnel, as determined on the basis of all information available to the United States Government.

SEC. 1035. REPORT ON POW/MIA MATTERS CONCERNING NORTH KOREA.

(a) FINDINGS.—Congress makes the following findings:

(1) The Select Committee on POW/MIA Affairs of the Senate concluded in its final report, dated January 13, 1993, that "it is likely that a large number of possible MIA remains can be repatriated and several records and documents on unaccounted for POW's and MIA's can be provided from North

Korea once a joint working level commission is set up under the leadership of the United States.".

(2) The Select Committee recommended in such report that "the Departments of State and Defense take immediate steps to form this commission through the United Nations Command at Panmunjom, Korea" and that the "commission should have a strictly humanitarian mission and should not be tied to political developments on the Korean peninsula.".

(3) In August 1993, the United States and North Korea entered into an agreement concerning the repatriation of remains of United States personnel.

(4) The establishment of a joint working level commission with North Korea could enhance the prospects for results under the August 1993 agreement.

(b) REPORT.—The Secretary of Defense shall, at the end of January and September of 1995, submit a report to Congress on the status of efforts to obtain information from North Korea concerning United States personnel involved in the Korean conflict who remain not accounted for and to obtain from North Korea any remains of such personnel.

(c) COMMISSION.—The President shall give serious consideration to establishing a joint working level commission with North Korea, consistent with the recommendations of the Select Committee on POW/MIA Affairs of the Senate set forth in the final report of the committee, dated January 13, 1993, to resolve the remaining issues relating to United States personnel who became prisoners of war or missing in action during the Korean conflict.

SEC. 1036. DISCLOSURE OF INFORMATION CONCERNING UNACCOUNTED FOR UNITED STATES PERSONNEL FROM THE KOREAN CONFLICT, THE VIETNAM ERA, AND THE COLD WAR.

[Omitted-Amendments]

---

d. Section 934 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85; approved Nov. 18, 1997)

SEC. 934. [10 U.S.C. 1501 note] 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 prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.

---

e. Section 1082 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85; approved Nov. 18, 1997)

SEC. 1082. [36 U.S.C. 189 note] DISPLAY OF POW/MIA FLAG.

(a) REQUIRED DISPLAY.—The POW/MIA flag shall be displayed at the locations specified in subsection (c) on POW/MIA flag display days. Such display shall serve (1) as the symbol of the Nation's concern and commitment to achieving the fullest possible accounting of Americans who, having been prisoners of war or missing in action, still remain unaccounted for, and (2) as the symbol of the Nation's commitment to achieving the fullest possible accounting for Americans who in the future may become prisoners of war, missing in action, or otherwise unaccounted for as a result of hostile action.

(b) DAYS FOR FLAG DISPLAY.—(1) For purposes of this section, POW/MIA flag display days are the following:

(A) Armed Forces Day, the third Saturday in May.

(B) Memorial Day, the last Monday in May.

(C) Flag Day, June 14.

(D) Independence Day, July 4.

(E) National POW/MIA Recognition Day.

(F) Veterans Day, November 11.

(2) In addition to the days specified in paragraph (1), POW/MIA flag display days include—

(A) in the case of display at medical centers of the Department of Veterans Affairs (required by subsection (c)(7)), any day on which the flag of the United States is displayed; and

(B) in the case of display at United States Postal Service post offices (required by subsection (c)(8)), the last business day before a day specified in paragraph (1) that in any year is not itself a business day.

(c) LOCATIONS FOR FLAG DISPLAY.—The locations for the display of the POW/MIA flag under subsection (a) are the following:

(1) The Capitol.

(2) The White House.

(3) The Korean War Veterans Memorial and the Vietnam Veterans Memorial.

(4) Each national cemetery.

(5) The buildings containing the official office of—

(A) the Secretary of State;

(B) the Secretary of Defense;

(C) the Secretary of Veterans Affairs; and

(D) the Director of the Selective Service System.

(6) Each major military installation, as designated by the Secretary of Defense.

(7) Each medical center of the Department of Veterans Affairs.

(8) Each United States Postal Service post office.

(d) COORDINATION WITH OTHER DISPLAY REQUIREMENT.—Display of the POW/MIA flag at the Capitol pursuant to paragraph (1) of subsection (c) is in addition to the display of that flag in the Rotunda of the Capitol pursuant to Senate Concurrent Resolution 5 of the 101st Congress, agreed to on February 22, 1989 (103 Stat. 2533).

(e) DISPLAY TO BE IN A MANNER VISIBLE TO THE PUBLIC.—Display of the POW/MIA flag pursuant to this section shall be in a manner designed to ensure visibility to the public.

(f) LIMITATION.—This section may not be construed or applied so as to require any employee to report to work solely for the purpose of providing for the display of the POW/MIA flag.

(g) POW/MIA FLAG DEFINED.—As used in this section, the term "POW/MIA flag" means the National League of Families POW/MIA flag recognized officially and designated by section 2 of Public Law 101–355 (36 U.S.C. 189).

(h) REGULATIONS FOR IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the head of each department, agency, or other establishment responsible for a location specified in subsection (c) (other than the Capitol) shall prescribe such regulations as necessary to carry out this section.

(i) PROCUREMENT AND DISTRIBUTION OF FLAGS.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services shall procure POW/MIA flags and distribute them as necessary to carry out this section.

(j) REPEAL OF SUPERSEDED LAW.—Section 1084 of Public Law 102–190 (36 U.S.C. 189 note) is repealed.

2. UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

(Public Law 99–410; August 28, 1986)

SECTION 1. [42 U.S.C. 1973ff note] SHORT TITLE.

This Act may be cited as the "Uniformed and Overseas Citizens Absentee Voting Act".

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. [42 U.S.C. 1973ff] FEDERAL RESPONSIBILITIES.

(a) PRESIDENTIAL DESIGNEE.—The President shall designate the head of an executive department to have primary responsibility for Federal functions under this title.

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as recommended in section 104;

(3) carry out section 103 with respect to the Federal write-in absentee ballot for overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 104;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; and

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of voter participation and a description of State-Federal cooperation.

(c) DUTIES OF OTHER FEDERAL OFFICIALS.—

(1) IN GENERAL.—The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this title.

(2) ADMINISTRATOR OF GENERAL SERVICES.—As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in absentee ballots (prescribed under section 103).

SEC. 102. [42 U.S.C. 1973ff–1] STATE RESPONSIBILITIES.

Each State shall—

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office.

SEC. 103. [42 U.S.C. 1973ff–2] FEDERAL WRITE-IN ABSENTEE BALLOT FOR OVERSEAS VOTERS IN GENERAL ELECTIONS FOR FEDERAL OFFICE.

(a) IN GENERAL.—The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by overseas voters who make timely application for, and do not receive, States, absentee ballots. [1]

(b) SUBMISSION AND PROCESSING.—Except as otherwise provided in this title, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an overseas voter shall not be counted—

(1) if the ballot is submitted from any location in the United States;

(2) if the application of the overseas voter for a State absentee ballot is received by the appropriate State election official less than 30 days before the general election; or

(3) if a State absentee ballot of the overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) SPECIAL RULES.—The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

[1] In subsection (a), a comma appears between "States" and "absentee ballots".

(d) SECOND BALLOT SUBMISSION; INSTRUCTION TO OVERSEAS VOTER.—An overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) USE OF APPROVED STATE ABSENTEE BALLOT IN PLACE OF FEDERAL WRITE-IN ABSENTEE BALLOT.—The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that—

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) CERTAIN STATES EXEMPTED.—A State is not required to permit use of the Federal write-in absentee ballot, if, on and after the date of the enactment of this title, the State has in effect a law providing that—

(1) a State absentee ballot is required to be available to any voter described in section 107(5)(A) at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 107(5)(B) or (C), as soon as the official list of candidates in the general election is complete.

SEC. 104. [42 U.S.C. 1973ff–3] RECOMMENDATIONS TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under

Federal law or the law of the State or other place where the oath is administered;

(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

(9) provide late registration procedures for persons recently separated from the Armed Forces.

SEC. 105. [42 U.S.C. 1973ff–4] ENFORCEMENT.

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this title.

SEC. 106. [42 U.S.C. 1973ff–5] EFFECT ON CERTAIN OTHER LAWS.

The exercise of any right under this title shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

SEC. 107. [42 U.S.C. 1973ff–6] DEFINITIONS.

As used in this title, the term—

(1) "absent uniformed services voter" means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 101), Federal write-in absentee ballots (prescribed under section 103), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this title;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representatives in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United

States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means—

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States. [1]

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

TITLE II—POSTAL, CRIMINAL, AND GENERAL PROVISIONS

[Omitted-Amendments]

---

[1] The period at the end of paragraph (5) should be a semicolon.

3. COAST AND GEODETIC SURVEY COMMISSIONED OFFICERS' ACT OF 1948

(Act of June 3, 1948)

SHORT TITLE

SECTION 1. That this Act may be cited as the "Coast and Geodetic Survey [1] Commissioned Officers' Act of 1948".

AUTHORIZED NUMBERS IN GRADES

SEC. 2. [33 U.S.C. 853a] (a)(1) Except as provided in paragraph (2), there are authorized to be not less than 264 and not more than 299 commissioned officers on the active list of the National Oceanic and Atmospheric Administration for fiscal years 1999, 2000, 2001, 2002, and 2003.

(2) The Administrator may reduce the number of commissioned officers on the active list below 264 if the Administrator determines that it is appropriate, taking into consideration—

(A) the number of billets on the fisheries, hydrographic, and oceanographic vessels owned and operated by the Administration;

(B) the need of the Administration to collect high-quality oceanographic, fisheries, and hydrographic data and information on a continuing basis;

(C) the need for effective and safe operation of the Administration's fisheries, hydrographic and oceanographic vessels;

(D) the need for effective management of the commissioned Corps; and

(E) the protection of the interests of taxpayers.

(3) At least 90 days before beginning any reduction as described in paragraph (2), the Administrator shall provide notice of such reduction to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(b) Of the total authorized number of commissioned officers on the active list of the Coast and Geodetic Survey, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in the proportion of eight in the grade of captain, to fourteen in the grade of commander, to nineteen in the grade of lieu-

[1] The Coast and Geodetic Survey referred to in this Act was consolidated with the Weather Bureau to form a new agency in Department of Commerce known as the Environmental Science Services Administration, and commissioned officers of Survey were transferred to the Environmental Science Services Administration, by Reorganization Plan No. 2 of 1965, efective. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. This Reorganization Plan also transferred to Secretary of Commerce all functions of the Coast and Geodetic Survey and the Director of Survey. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. The Commissioned Officer Corps of Environmental Science Services Administration was redesignated the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration by Reorganization Plan No. 4 of 1970, effective Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.

tenant commander, to twenty-three in the grade of lieutenant, to eighteen in the grade of lieutenant (junior grade), to eighteen in the grade of ensign.

(c) Whenever a final fraction occurs in computing the authorized number of officers in any grade, the nearest whole number shall be taken, and if such fraction be one-half the next higher whole number shall be taken: *Provided,* That the total number of officers as authorized by law shall not be increased as the result of the computations prescribed herein, and if necessary the number of officers in the lowest grade shall be reduced accordingly.

(d) No officer shall be reduced in grade or pay or separated from the active list as the result of any computations made to determine the authorized number of officers in the various grades.

(e) Nothing in this section shall be construed as requiring the filling of any vacancy or as prohibiting additional numbers in any grade to compensate for vacancies existing in higher grades.

(f) The total number of officers on active duty as authorized by law may be temporarily exceeded provided that the average number on active duty for the fiscal year shall not exceed the authorized number.

PROMOTION AND SEPARATION OF OFFICERS

SEC. 3. [33 U.S.C. 853b] Promotion to fill vacancies in all permanent grades above that of lieutenant (junior grade) shall be made by selection from the next lower respective grades upon recommendation of the personnel board hereinafter provided for.

SEC. 4. [33 U.S.C. 853c] Irrespective of any vacancies, each officer in the permanent grade of lieutenant (junior grade) and lieutenant shall be considered by the personnel board for promotion to the grade of lieutenant and lieutenant commander in sufficient time so that, if found fully qualified, such officer may be promoted to and appointed in such grade upon completion of seven and fourteen years of service, respectively. All promotions under this section shall be made on the date on which the required service is completed, and the authorized number of officers in the grade of lieutenant and lieutenant commander shall be temporarily increased, if necessary, to authorize such appointments: *Provided,* That an officer found not fully qualified in accordance with this section may be promoted on such later date on which he may be found fully qualified.

SEC. 5. [33 U.S.C. 853d] Irrespective of any vacancies, any officer in the permanent grade of lieutenant commander who has completed twenty-one years of service and any officer in the permanent grade of commander who has completed thirty years of service may be considered by the personnel board at any time for promotion to the grade of commander and captain, respectively. If selected, he may be promoted at any time and the authorized number of officers in the grade of commander and captain shall be temporarily increased, if necessary, to authorize such appointments.

SEC. 6. [33 U.S.C. 853e] (a) Officers in the permanent grade of ensign shall be promoted to and appointed in the grade of lieu-

tenant (junior grade) on completion of three years of service, and the authorized number of officers in the grade of lieutenant (junior grade) shall from time to time be temporarily increased as necessary to authorize such appointments.

(b) Ensigns who are found not fully qualified at any time shall have their commissions revoked and be separated from the commissioned service.

SEC. 7. [33 U.S.C. 853f] Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any officer below him on the lineal list, except that an officer who has lost numbers shall be assumed to have for promotion purposes no greater service than the officer next above him in his new position on the lineal list.

SEC. 8. [33 U.S.C. 853g] (a) As recommended by the personnel board—

(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and

(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

(b) In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) plus the number of officers retired for age may not exceed the whole number nearest four percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

(c) Any retirement or separation under subsection (a) shall take effect on the first day of the sixth month beginning after the date on which the Secretary of Commerce approves the retirement or separation, except that if the officer concerned requests earlier retirement or separation, the date shall be as determined by the Secretary.

SEC. 9. [33 U.S.C. 853h] (a) An officer who is separated under section 8 and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) unless the Secretary of Commerce determines that the conditions under which the officer is separated do not warrant payment of that pay.

(b)(1) In the case of an officer who has completed five or more years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is 10 percent of the product of (A) the years of active service creditable to the officer, and (B) twelve times the monthly basic pay to which the officer was entitled at the time of separation.

(2) In the case of an officer who has completed three but fewer than five years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is one-half of the amount computed under paragraph (1).

(c) In determining an officer'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 officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(d) A period for which an officer has previously received separation pay, severance pay, or readjustment pay under any other provision of law based on service in a uniformed service may not be included in determining the years of creditable service that may be counted in computing the separation pay of the officer under this section.

(e)(1) An officer 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 a uniformed service and who later qualifies for retired pay under this Act shall have deducted from each payment of retired pay so much of that pay as is based on the service for which the officer received that separation pay, severance pay, or readjustment pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) An officer who has received separation pay under this section may not be deprived, by reason of receipt of that pay, of any disability compensation to which the officer is entitled under the laws administered by the Secretary of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation 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 separation pay received because of an earlier discharge, separation, 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.

SEC. 10. [33 U.S.C. 853i] (a) Appointments in and promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate.

(b) In time of emergency declared by the President or by the Congress, and in time of war, the President is authorized, in his discretion, to suspend the operation of all or any part or parts of the several provisions of law pertaining to promotion.

SEC. 11. [33 U.S.C. 853j] Nothing in this Act shall be construed to modify the provisions of existing law relating to examination of officers for promotion, and no officer shall be promoted until he shall have passed the prescribed examinations.

SEC. 12. [33 U.S.C. 853j–l] (a) Temporary appointment in the grade of ensign may be made by the President alone, provided such temporary appointment will be terminated at the close of the next regular session of the Congress unless confirmed by the Senate.

(b) Officers in the permanent grade of ensign may be temporarily promoted to and appointed in the grade of lieutenant junior

grade by the President alone whenever vacancies exist in higher grades.

(c) When determined by the Secretary of Commerce to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President alone. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.

RETIREMENT OF OFFICERS

SEC. 13. [33 U.S.C. 853k] (a) When any commissioned officer serving in a rank below that of rear admiral has attained the age of sixty years, he shall be placed on the retired list: *Provided,* That this subsection shall not become effective until a date six months subsequent to the enactment of this Act, and until such effective date the retirement age for officers serving in a rank below that of rear admiral shall be sixty-two years.

(b) When any officer serving in a rank above that of captain has attained the age of sixty-two years, he shall be placed on the retired list: *Provided,* That the President may, in his discretion, defer placing any such officer on the retired list for the length of time he deems advisable but not later than the date upon which such officer attains the age of sixty-four years.

SEC. 14. [33 U.S.C. 853l] When any commissioned officer has completed twenty years of service, he may at any time thereafter, upon his own application, in the discretion of the President, be placed on the retired list.

SEC. 15. [Repealed]

SEC. 16. [33 U.S.C. 853o] (a) Each commissioned officer on the retired list who first became a member of a uniformed service (as defined in section 101 of title 10, United States Code) before September 8, 1980, shall receive retired pay at the rate determined by multiplying—

(1) the retired pay base determined under section 1406(g) of title 10, United States Code; by

(2) 2½ percent of the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

The retired pay so computed may not exceed 75 percent of the retired pay base.

(b) Each commissioned officer on the retired list who first became a member of a uniformed service (as defined in section 101 of title 10, United States Code) on or after September 8, 1980, shall receive retired pay at the rate determined by multiplying—

(1) the retired pay base determined under section 1407 of title 10, United States Code; by

(2) the retired pay multiplier determined under section 1409 of such title for the number of years of service that may be credited to the officer under section 1405 of such title as if the officer's service were service as a member of the Armed Forces.

(c)(1) In computing the number of years of service of an officer for the purposes of subsection (a)—

(A) each full month of service that is in addition to the number of full years of service creditable to the officer shall be credited as 1/12 of a year; and

(B) any remaining fractional part of a month shall be disregarded.

(2) Retired pay computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

SEC. 17. [33 U.S.C. 853p] (a) Each commissioned officer heretofore or hereafter retired pursuant to any provision of law shall be placed on the retired list with the highest rank, permanent or temporary, held by him while on active duty, if his performance of duty, in the case of temporary rank, has been satisfactory as determined by the Secretary of the department or departments under whose jurisdiction the officer served, and shall receive retired pay based on such higher rank: *Provided,* That for the purposes of this section the words "temporary rank" shall mean temporary rank held prior to June 30, 1946.

(b) Officers on the retired list returned to an inactive status with higher rank pursuant to subsection (a) of this section shall receive retired pay based on such higher rank.

SEC. 18. [33 U.S.C. 853q] Nothing in this Act shall prevent any officer from being placed on the retired list with the highest rank and with the highest retired pay to which he might be entitled under other provision of law.

PERSONNEL BOARD

SEC. 19. [33 U.S.C. 853r] At least once a year and at such other times as may be necessary, the Secretary of Commerce shall appoint a personnel board consisting of not less than five officers not below the permanent rank of commander on the active list, to recommend such changes in the lineal list as the board may determine, and to make selections and recommendations for the promotion, separation, and retirement of officers as herein prescribed: *Provided,* That in case any recommendation by the board is not acceptable to the Secretary of Commerce or to the President, the board shall make such further recommendations as shall be acceptable.

SEC. 20. [Repealed]

AMENDMENTS TO AND REPEAL OF APPOINTMENT, PROMOTION, AND RETIREMENT LAWS

SEC. 21. [Omitted—Amendments to other laws]

SEC. 22. [Omitted—Amendments to other laws]

SEC. 23. [33 U.S.C. 853t] (a) Original appointments may be made in grades up to and including lieutenant after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary of Commerce: *Provided,* That the

President, under such regulations as he may prescribe, may revoke the commission of any officer appointed under this section during his first three years of service if he is found not qualified for the service.

(b) Any person appointed under authority of this section shall be placed on the lineal list of active duty officers in a position commensurate with his age, education, and experience in accordance with regulations prescribed by the Secretary of Commerce.

(c)(1) For the purposes of basic pay any person appointed under this section to the grade of lieutenant or lieutenant (junior grade) shall be considered as having, on date of appointment, three years or one and one-half years service respectively.

(2) If a person appointed under this section is entitled to credit for the purpose of basic pay under other provision of law which would exceed that authorized by subsection (c)(1) he shall be credited with that service in lieu of the credit provided by subsection (c)(1).

SEC. 24. [33 U.S.C. 853u] (a) The Secretary may designate positions in the Administration as being positions of importance and responsibility for which it is appropriate that commissioned officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or rear admiral (lower half) as designated by the Secretary for each position, and may assign officers to those positions. One such position shall be appointed from the officers on the active duty promotion list serving in or above the grade of captain, and who shall be responsible for administration of the commissioned officers, and for oversight of the operation of the vessel fleet, of the Administration. An officer assigned to any position under this section has the grade designated for that position if appointed to that grade by the President, by and with the advice and consent of the Senate.

(b) The number of officers serving on active duty under appointments under this section may not exceed—

(1) one in the grade of vice admiral;

(2) three in the grade of rear admiral; and

(3) three in the grade of rear admiral (lower half).

(c) An officer appointed to a grade under this section, while serving in that grade, shall have the pay and allowances of the grade to which appointed.

(d) An appointment of an officer under this section—

(1) does not vacate the permanent grade held by the officer; and

(2) creates a vacancy on the active list.

(e) The provisions of section 2(g) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.) apply to an officer who serves in a grade above captain under an appointment under this section in the same manner as if the officer served in that grade under section 2(d) or 2(f) of that Reorganization Plan.

SEC. 25. [33 U.S.C. 853v] (a) PRESENTATION OF FLAG UPON RETIREMENT.—Upon the release of a commissioned officer from active commissioned service for retirement, the Secretary of Commerce shall present a United States flag to the officer.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—An officer is not eligible for presentation of a flag under subsection (a) if the officer 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.

4. EDUCATIONAL SERVICES FOR MEMBERS

Section 1212 of the Department of Defense Authorization Act, 1986

(Public Law 99–145; approved Nov. 8, 1985)

SEC. 1212. [10 U.S.C. 113 note] PROHIBITION OF CERTAIN RESTRICTIONS ON INSTITUTIONS ELIGIBLE TO PROVIDE EDUCATIONAL SERVICES

(a) No solicitation, contract, or agreement for the provision of offduty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

(b) No solicitation, contract, or agreement for the provision of offduty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

(c)(1) The Secretary of Defense shall conduct a study to determine the current and future needs of members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees for postsecondary education services at overseas locations. The Secretary shall determine on the basis of the results of that study whether the policies and procedures of the Department in effect on the date of the enactment of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991 with respect to the procurement of such services are—

(A) consistent with the provisions of subsections (a) and (b);

(B) adequate to ensure the recipients of such services the benefit of a choice in the offering of such services; and

(C) adequate to ensure that persons stationed at geographically isolated military installations or at installations

with small complements of military personnel are adequately served.

The Secretary shall complete the study in such time as necessary to enable the Secretary to submit the report required by paragraph (2)(A) by the deadline specified in that paragraph.

(2)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study referred to in paragraph (1), together with a copy of any revisions in policies and procedures made as a result of such study. The report shall be submitted not later than March 1, 1990.

(B) The Secretary shall include in the report an explanation of how determinations are made with regard to—

(i) affording members, employees, and dependents a choice in the offering of courses of postsecondary education; and

(ii) whether the services provided under a contract for such services should be limited to an installation, theater, or other geographic area.

(3)(A) Except as provided in subparagraph (B), no contract for the provision of services referred to in subsection (a) may be awarded, and no contract or agreement entered into before the date of the enactment of this paragraph may be renewed or extended on or after such date, until the end of the 60-day period beginning on the date on which the report referred to in paragraph (2)(A) is received by the committees named in that paragraph.

(B) A contract or an agreement in effect on October 1, 1989, for the provision of postsecondary education services in the European Theater for members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees may be renewed or extended without regard to the limitation in subparagraph (A).

(C) In the case of a contract for services with respect to which a solicitation is pending on the date of the enactment of this paragraph, the contract may be awarded—

(i) on the basis of the solicitation as issued before the date of the enactment of this paragraph;

(ii) on the basis of the solicitation issued before the date of the enactment of this paragraph modified so as to conform to any changes in policies and procedures the Secretary determines should be made as a result of the study required under paragraph (1); or

(iii) on the basis of a new solicitation.

(d) Nothing in this section shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel.

5. COUNTERINTELLIGENCE POLYGRAPH PROGRAMS

a. Section 1121 of the National Defense Authorization Act for Fiscal Years 1988 and 1989

(Public Law 100–180, approved Dec. 4, 1987)

SEC. 1121. [10 U.S.C. 113 note] COUNTERINTELLIGENCE POLYGRAPH PROGRAM

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be based on Department of Defense Directive 5210.48, dated December 24, 1984.

(b) PERSONS COVERED.—Except as provided in subsection (d), the following persons whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order) are subject to this section:

(1) Military and civilian personnel of the Department of Defense.

(2) Personnel of defense contractors.

(c) LIMITATION ON NUMBER OF EXAMINATIONS.—The number of counterintelligence polygraph examinations that may be administered under this section may not exceed 5,000 during any fiscal year for which a specific number is not otherwise provide by law.

(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply—

(1) to a person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency;

(2) to (A) a person employed by or assigned or detailed to the National Security Agency, (B) an expert or consultant under contract to the National Security Agency, (C) an employee of a contractor of the National Security Agency, or (D) a person applying for a position in the National Security Agency;

(3) to a person assigned to a space where sensitive cryptographic information is produced, processed, or stored; or

(4) to a person employed by, or assigned or detailed, to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

(e) POLYGRAPH RESEARCH PROGRAM.—The Secretary of Defense shall carry out a continuing research program to support the poly-

graph activities of the Department of Defense. The program shall include—

(1) an on-going evaluation of the validity of polygraph techniques used by the Department;

(2) research on polygraph countermeasures and anti-counter-measures; and

(3) developmental research on polygraph techniques, instrumentation, and analytic methods.

(f) ANNUAL REPORT ON POLYGRAPH PROGRAMS.—(1) Not later than January 15 of each year, the Secretary of Defense shall submit to Congress a report on polygraph examinations administered by or for the Department of Defense during the previous fiscal year (whether administered under this section or any other authority).

(2) Each such report shall include the following with regard to the program authorized by subsection (a):

(A) A statement of the number of polygraph examinations administered by or for the Department of Defense during such fiscal year.

(B) A description of the purposes and results of such examinations.

(C) A description of the criteria used for selecting programs and persons for such examination.

(D) A statement of the number of persons who refused to submit to such an examination and a description of the actions taken as a result of the refusals.

(E) A statement of the number of persons for which such an examination indicated deception and the action taken as a result of the examinations.

(F) A detailed accounting of those cases in which more than two such examinations were needed to attempt to resolve discrepancies and those cases in which the examination of a person extended over more than one day.

(3) Each such report shall also include the following:

(A) A description of any plans to expand the use of polygraph examinations in the Department of Defense.

(B) A discussion of any plans of the Secretary for recruiting and training additional polygraph operators together with statistical data on the employment turnover of Department of Defense polygraph operators.

(C) A description of the results during the preceding fiscal year of the research program under subsection (e).

(D) A statement of the number of polygraph examinations administered to persons described in subsection (d) (which number may be set forth in a classified annex to the report).

(g) REPEAL.—Section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 99 Stat. 726), is repealed.

(h) EFFECTIVE DATE.—This section shall take effect as of October 1, 1987.

b. Section 3154 of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

SEC. 3154. [42 U.S.C. 7383h] COUNTERINTELLIGENCE POLYGRAPH PROGRAM.

(a) PROGRAM REQUIRED.—The Secretary of Energy, acting through the Director of Counterintelligence, shall carry out a counterintelligence polygraph program for the defense-related activities of the Department. The counterintelligence polygraph program shall consist of the administration of counterintelligence polygraph examinations to each covered person who has access to high-risk programs.

(b) COVERED PERSONS.—(1) Subject to paragraph (2), for purposes of this section, a covered person is one of the following:

(A) An officer or employee of the Department.

(B) An expert or consultant under contract to the Department.

(C) An officer or employee of a contractor of the Department.

(D) An individual assigned or detailed to the Department.

(E) An applicant for a position in the Department.

(2) A person described in paragraph (1) is a covered person for purposes of this section only if the position of the person, or for which the person is applying, under that paragraph is a position in one of the categories of positions listed in section 709.4(a) of title 10, Code of Federal Regulations.

(c) HIGH-RISK PROGRAMS.—For purposes of this section, high-risk programs are the following:

(1) Programs using information known as Sensitive Compartmented Information.

(2) The programs known as Special Access Programs and Personnel Security and Assurance Programs.

(3) Any other program or position category specified in section 709.4(a) of title 10, Code of Federal Regulations.

(d) INITIAL TESTING AND CONSENT.—(1) The Secretary may not permit a covered person to have initial access to any high-risk program unless that person first undergoes a counterintelligence polygraph examination and consents in a signed writing to the counterintelligence polygraph examinations required by this section.

(2) Subject to paragraph (3), the Secretary may, after consultation with appropriate security personnel, waive the applicability of paragraph (1) to a covered person—

(A) if—

(i) the Secretary determines that the waiver is important to the national security interests of the United States;

(ii) the covered person has an active security clearance; and

(iii) the covered person acknowledges in a signed writing that the capacity of the covered person to perform duties under a high-risk program after the expiration of the waiver is conditional upon meeting the requirements of paragraph (1) within the effective period of the waiver;

(B) if another Federal agency certifies to the Secretary that the covered person has completed successfully a full-scope or counterintelligence-scope polygraph examination during the 5-year period ending on the date of the certification; or

(C) if the Secretary determines, after consultation with the covered person and appropriate medical personnel, that the treatment of a medical or psychological condition of the covered person should preclude the administration of the examination.

(3)(A) The Secretary may not commence the exercise of the authority under paragraph (2) to waive the applicability of paragraph (1) to any covered persons until 15 days after the date on which the Secretary submits to the appropriate committees of Congress a report setting forth the criteria to be used by the Secretary for determining when a waiver under paragraph (2)(A) is important to the national security interests of the United States. The criteria shall not include the need to maintain the scientific vitality of the laboratory. The criteria shall include an assessment of counterintelligence risks and programmatic impacts.

(B) Any waiver under paragraph (2)(A) shall be effective for not more than 120 days, and a person who is subject to a waiver under paragraph (2)(A) may not ever be subject to another waiver under paragraph (2)(A).

(C) Any waiver under paragraph (2)(C) shall be effective for the duration of the treatment on which such waiver is based.

(4) The Secretary shall submit to the appropriate committees of Congress on a semi-annual basis a report on any determinations made under paragraph (2)(A) during the 6-month period ending on the date of such report. The report shall include a national security justification for each waiver resulting from such determinations.

(5) In this subsection, the term "appropriate committees of Congress" means the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(6) It is the sense of Congress that the waiver authority in paragraph (2) not be used by the Secretary to exempt from the applicability of paragraph (1) any covered persons in the highest risk categories, such as persons who have access to the most sensitive weapons design information and other highly sensitive programs, including special access programs.

(7) The authority under paragraph (2) to waive the applicability of paragraph (1) to a covered person shall expire on September 30, 2002.

(e) ADDITIONAL TESTING.—The Secretary may not permit a covered person to have continued access to any high-risk program unless that person undergoes a counterintelligence polygraph examination within five years after that person has initial access, and thereafter—

(1) not less frequently than every five years; and

(2) at any time at the direction of the Director of Counterintelligence.

(f) COUNTERINTELLIGENCE POLYGRAPH EXAMINATION.—For purposes of this section, the term "counterintelligence polygraph examination" means a polygraph examination using questions reasonably calculated to obtain counterintelligence information, including questions relating to espionage, sabotage, terrorism, unauthorized disclosure of classified information, deliberate damage to or malicious misuse of a United States Government information or defense system, and unauthorized contact with foreign nationals.

(g) REGULATIONS.—The Secretary shall prescribe any regulations necessary to carry out this section. Those regulations shall include procedures, to be developed in consultation with the Federal Bureau of Investigation, for—

(1) identifying and addressing "false positive" results of polygraph examinations; and

(2) ensuring that adverse personnel actions not be taken against an individual solely by reason of that individual's physiological reaction to a question in a polygraph examination, unless reasonable efforts are first made to independently determine through alternative means the veracity of that individual's response to that question.

(h) PLAN FOR EXTENSION OF PROGRAM.—Not later than 180 days after the date of the enactment of this Act, 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 plan on extending the program required by this section. The plan shall provide for the administration of counterintelligence polygraph examinations in accordance with the program to each covered person who has access to—

(1) the programs known as Personnel Assurance Programs; and

(2) the information identified as Sensitive Compartmented Information.

6. EFFORTS TO ENHANCE RECRUITING FOR THE ARMED SERVICES

a. Treating Persons with GED or Home School Diploma as Eligible for Enlistment in Armed Forces

(Section 571 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999; Public Law 105–261, approved Oct. 17, 1998)

SEC. 571. [10 U.S.C. 520 note] PILOT PROGRAM FOR TREATING GED AND HOME SCHOOL DIPLOMA RECIPIENTS AS HIGH SCHOOL GRADUATES FOR DETERMINATIONS OF ELIGIBILITY FOR ENLISTMENT IN THE ARMED FORCES.

(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to assess whether the Armed Forces could better meet recruiting requirements by treating GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining the eligibility of those persons to enlist in the Armed Forces. The Secretary of each military department shall administer the pilot program for the Armed Force or armed forces under the jurisdiction of that Secretary.

(b) PERSONS ELIGIBLE UNDER THE PILOT PROGRAM AS HIGH SCHOOL GRADUATES.—Under the pilot program, a person shall be treated as having graduated from high school with a high school diploma for the purpose described in subsection (a) if—

(1) the person has completed a general education development program while participating in the National Guard Challenge Program under section 509 of title 32, United States Code, and is a GED recipient; or

(2) the person is a home school diploma recipient and provides a transcript demonstrating completion of high school to the military department involved under the pilot program.

(c) GED AND HOME SCHOOL DIPLOMA RECIPIENTS.—For the purposes of this section—

(1) a person is a GED recipient if the person, after completing a general education development program, has obtained certification of high school equivalency by meeting State requirements and passing a State approved exam that is administered for the purpose of providing an appraisal of the person's achievement or performance in the broad subject matter areas usually required for high school graduates; and

(2) a person is a home school diploma recipient if the person has received a diploma for completing a program of education through the high school level at a home school, without regard to whether the home school is treated as a private school under the law of the State in which located.

(d) ANNUAL LIMIT ON NUMBER.—Not more than 1,250 GED recipients and home school diploma recipients enlisted by an armed force during a fiscal year may be treated under the pilot program as having graduated from high school with a high school diploma.

(e) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 1998, and ending on September 30, 2003.

(f) REPORT.—Not later than February 1, 2004, 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 pilot program. The report shall include the following, set forth separately for GED recipients and home school diploma recipients:

(1) The assessment of the Secretary of Defense, and any assessment of any of the Secretaries of the military departments, regarding the value of, and any necessity for, authority to treat GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining the eligibility of those persons to enlist in the Armed Forces.

(2) A comparison (shown by armed force and by each fiscal year of the pilot program) of the performance of the persons who enlisted during the fiscal year as GED or home school diploma recipients treated under the pilot program as having graduated from high school with a high school diploma with the performance of the persons who enlisted in that armed force during the same fiscal year after having graduated from high school with a high school diploma, with respect to the following:

(A) Attrition.

(B) Discipline.

(C) Adaptability to military life.

(D) Aptitude for mastering the skills necessary for technical specialties.

(E) Reenlistment rates.

(g) STATE DEFINED.—For purposes of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

---

b. Army College First Pilot Program for Delayed Entry into Active Service in the Army

(Section 573 of the National Defense Authorization Act for Fiscal Year 2000; Public Law 106–65, approved Oct. 5, 1999)

SEC. 573. [10 U.S.C. 513 note] 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.

c. Pilot Programs to Enhance Recruiting

(Sections 561 and 564 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001; as enacted by Public Law 106–398, approved Oct. 30, 2000)

SEC. 561. [10 U.S.C. 503 note] ARMY RECRUITING PILOT PROGRAMS.

(a) REQUIREMENT FOR PROGRAMS.—The Secretary of the Army shall carry out pilot programs to test various recruiting approaches under this section for the following purposes:

(1) To assess the effectiveness of the recruiting approaches for creating enhanced opportunities for recruiters to make direct, personal contact with potential recruits.

(2) To improve the overall effectiveness and efficiency of Army recruiting activities.

(b) OUTREACH THROUGH MOTOR SPORTS.—(1) One of the pilot programs shall be a pilot program of public outreach that associates the Army with motor sports competitions to achieve the objectives set forth in paragraph (2).

(2) The events and activities undertaken under the pilot program shall be designed to provide opportunities for Army recruiters to make direct, personal contact with high school students to achieve the following objectives:

(A) To increase enlistments by students graduating from high school.

(B) To reduce attrition in the Delayed Entry Program of the Army by sustaining the personal commitment of students who have elected delayed entry into the Army under the program.

(3) Under the pilot program, the Secretary of the Army shall provide for the following:

(A) For Army recruiters or other Army personnel—

(i) to organize Army sponsored career day events in association with national motor sports competitions; and

(ii) to arrange for or encourage attendance at the competitions by high school students, teachers, guidance counselors, and administrators of high schools located near the competitions.

(B) For Army recruiters and other soldiers to attend national motor sports competitions—

(i) to display exhibits depicting the contemporary Army and career opportunities in the Army; and

(ii) to discuss those opportunities with potential recruits.

(C) For the Army to sponsor a motor sports racing team as part of an integrated program of recruitment and publicity for the Army.

(D) For the Army to sponsor motor sports competitions for high school students at which recruiters meet with potential recruits.

(E) For Army recruiters or other Army personnel to compile in an Internet accessible database the names, addresses, telephone numbers, and electronic mail addresses of persons who are identified as potential recruits through activities under the pilot program.

(F) Any other activities associated with motor sports competition that the Secretary determines appropriate for Army recruitment purposes.

(c) OUTREACH AT VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES.—(1) One of the pilot programs shall be a pilot program under which Army recruiters are assigned, as their primary responsibility, at postsecondary vocational institutions and community colleges for the purpose of recruiting students graduating from those institutions and colleges, recent graduates of those institutions and colleges, and students withdrawing from enrollments in those institutions and colleges.

(2) The Secretary of the Army shall select the institutions and colleges to be invited to participate in the pilot program.

(3) The conduct of the pilot program at an institution or college shall be subject to an agreement which the Secretary shall enter into with the governing body or authorized official of the institution or college, as the case may be.

(4) Under the pilot program, the Secretary shall provide for the following:

(A) For Army recruiters to be placed in postsecondary vocational institutions and community colleges to serve as a resource for guidance counselors and to recruit for the Army.

(B) For Army recruiters to recruit from among students and graduates described in paragraph (1).

(C) For the use of telemarketing, direct mail, interactive voice response systems, and Internet website capabilities to assist the recruiters in the postsecondary vocational institutions and community colleges.

(D) For any other activities that the Secretary determines appropriate for recruitment activities in postsecondary vocational institutions and community colleges.

(5) In this subsection, the term "postsecondary vocational institution" has the meaning given the term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

(d) CONTRACT RECRUITING INITIATIVES.—(1) One of the pilot programs shall be a program that expands in accordance with this subsection the scope of the Army's contract recruiting initiatives that are ongoing as of the date of the enactment of this Act. Under the pilot program, the Secretary of the Army shall select at least 10 recruiting companies to apply the initiatives in efforts to recruit personnel for the Army.

(2) Under the pilot program, the Secretary shall provide for the following:

(A) For replacement of the Regular Army recruiters by contract recruiters in the 10 recruiting companies selected under paragraph (1).

(B) For operation of the 10 companies under the same rules and chain of command as the other Army recruiting companies.

(C) For use of the offices, facilities, and equipment of the 10 companies by the contract recruiters.

(D) For reversion to performance of the recruiting activities by Regular Army soldiers in the 10 companies upon termination of the pilot program.

(E) For any other uses of contractor personnel for Army recruiting activities that the Secretary determines appropriate.

(e) DURATION OF PILOT PROGRAMS.—The pilot programs required by this section shall be carried out during the period beginning on October 1, 2000, and, subject to subsection (f), ending on December 31, 2005.

(f) AUTHORITY TO EXPAND OR EXTEND PILOT PROGRAMS.—The Secretary may expand the scope of any of the pilot programs (under subsection (b)(3)(F), (c)(4)(D), (d)(2)(E), or otherwise) or extend the period for any of the pilot programs. Before doing so in the case of a pilot program, the Secretary of the Army 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 the expansion of the pilot program (together with the scope of the expansion) or the continuation of the pilot program (together with the period of the extension), as the case may be.

(g) REPORTS.—Not later than February 1, 2006, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a separate report on each of the pilot programs carried out under this section. The report on a pilot program shall include the following:

(1) The Secretary's assessment of the value of the actions taken in the administration of the pilot program for increasing the effectiveness and efficiency of Army recruiting.

(2) Any recommendations for legislation or other action that the Secretary considers appropriate to increase the effectiveness and efficiency of Army recruiting.

* * * * * * *

SEC. 564. [10 U.S.C. 503 note] PILOT PROGRAM TO ENHANCE MILITARY RECRUITING BY IMPROVING MILITARY AWARENESS OF SCHOOL COUNSELORS AND EDUCATORS.

(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program to determine if cooperation with military recruiters by local educational agencies and by institutions of higher education could be enhanced by improving the understanding of school counselors and educators about military recruiting and military career opportunities. The pilot program shall be conducted during a three-year period beginning not later than 180 days after the date of the enactment of this Act.

(b) CONDUCT OF PILOT PROGRAM THROUGH PARTICIPATION IN INTERACTIVE INTERNET SITE.—(1) The pilot program shall be conducted by means of participation by the Department of Defense in a qualifying interactive Internet site.

(2) For purposes of this section, a qualifying interactive Internet site is an Internet site in existence as of the date of the enactment of this Act that is designed to provide to employees of local educational agencies and institutions of higher education participating in the Internet site—

(A) systems for communicating;

(B) resources for individual professional development;

(C) resources to enhance individual on-the-job effectiveness; and

(D) resources to improve organizational effectiveness.

(3) Participation in an Internet site by the Department of Defense for purposes of this section shall include—

(A) funding;

(B) assistance; and

(C) access by other Internet site participants to Department of Defense aptitude testing programs, career development information, and other resources, in addition to information on military recruiting and career opportunities.

(c) 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 providing the Secretary's findings and conclusions on the pilot program not later than 180 days after the end of the three-year program period.

7. EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL

Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 1101. [5 U.S.C. 3104 note] EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL.

(a) PROGRAM AUTHORIZED.—During the program period specified in subsection (e)(1), the Secretary of Defense may carry out a program of experimental use of the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

(b) SPECIAL PERSONNEL MANAGEMENT AUTHORITY.—Under the program, the Secretary may—

(1) without regard to any provision of title 5, United States Code, governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

(A) not more than 40 scientific and engineering positions in the Defense Advanced Research Projects Agency;

(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services; and

(C) not more than a total of 10 scientific and engineering positions in the National Imagery and Mapping Agency and the National Security Agency;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code, as increased by locality-based comparability payments under section 5304 of such title, notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d)(1).

(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Defense Advanced Research Projects Agency.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional payments paid to an employee under subsection (b)(3) for any 12-month period may not exceed the least of the following amounts:

(A) $25,000.

(B) The amount equal to 25 percent of the employee's annual rate of basic pay.

(C) The amount of the limitation that is applicable for a calendar year under section 5307(a)(1) of title 5, United States Code.

(2) An employee appointed under subsection (b)(1) is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under subsection (b)(3).

(e) PERIOD OF PROGRAM.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on October 16, 2005.

(2) After the termination of the program—

(A) no appointment may be made under paragraph (1) of subsection (b);

(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and

(C) no period of service may be extended under subsection (c)(2).

(f) SAVINGS PROVISIONS.—In the case of an employee who, on the last day of the program period specified in subsection (e)(1), is serving in a position pursuant to an appointment under subsection (b)(1)—

(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(A) the period for which the employee was appointed; or

(B) the period to which the employee's service is limited under subsection (c), including any extension made under paragraph (2) of that subsection before the termination of the program; and

(2) the rate of basic pay prescribed for the position under subsection (b)(2) may not be reduced for so long (within the period applicable to the employee under paragraph (1)) as the employee continues to serve in the position without a break in service.

(g) ANNUAL REPORT.—(1) Not later than October 15 of each year, beginning in 1999 and ending in 2006, the Secretary of Defense shall submit a report on the program to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The report submitted in a

year shall cover the 12-month period ending on the day before the anniversary, in that year, of the date of the enactment of this Act.

(2) The annual report shall contain, for the period covered by the report, the following:

(A) A detailed discussion of the exercise of authority under this section.

(B) The sources from which individuals appointed under subsection (b)(1) were recruited.

(C) The methodology used for identifying and selecting such individuals.

(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.

8. DEFENSE REFORM INITIATIVE ENTERPRISE PROGRAM FOR MILITARY MANPOWER AND PERSONNEL INFORMATION

Section 8147 of the Department of Defense Appropriations Act, 1999

(Public Law 105–262, approved Oct. 17, 1998)

SEC. 8147.[1] [10 U.S.C. 113 note] The Secretary of Defense shall establish, through a revised Defense Integrated Military Human Resources System (DIMHRS), a defense reform initiative enterprise pilot program for military manpower and personnel information: *Provided*, That this pilot program should include all functions and systems currently included in DIMHRS and shall be expanded to include all appropriate systems within the enterprise of personnel, manpower, training, and compensation: *Provided further*, That in establishing a revised DIMHRS enterprise program for manpower and personnel information superiority the functions of this program shall include, but not be limited to: (1) an analysis and determination of the number and kinds of information systems necessary to support manpower and personnel within the Department of Defense; and (2) the establishment of programs to develop and implement information systems in support of manpower and personnel to include an enterprise level strategic approach, performance and results based management, business process improvement and other non-material solutions, the use of commercial or government off-the-shelf technology, the use of modular contracting as defined by Public Law 104–106, and the integration and consolidation of existing manpower and personnel information systems: *Provided further*, That the Secretary of Defense shall reinstate fulfillment standards designated as ADS–97–03–GD, dated January, 1997: *Provided further*, That the requirements of this sec-

[1] Section 924 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 726; 10 U.S.C. 113 note) provides as follows:

SEC. 924. ADMINISTRATION OF DEFENSE REFORM INITIATIVE ENTERPRISE PROGRAM FOR MILITARY MANPOWER AND PERSONNEL INFORMATION.

(a) EXECUTIVE AGENT.—The Secretary of Defense may designate the Secretary of the Navy as the Department of Defense executive agent for carrying out the pilot program described in subsection (c).

(b) IMPLEMENTING OFFICE.—If the Secretary of Defense makes the designation referred to in subsection (a), the Secretary of the Navy, in carrying out that pilot program, shall act through the head of the Systems Executive Office for Manpower and Personnel of the Department of the Navy, who shall act in coordination with the Under Secretary of Defense for Personnel and Readiness and the Chief Information Officer of the Department of Defense.

(c) PILOT PROGRAM.—The pilot program referred to in subsection (a) is the defense reform initiative enterprise pilot program for military manpower and personnel information established pursuant to section 8147 of the Department of Defense Appropriations Act, 1999 (Public Law 105–262; 112 Stat. 2341; 10 U.S.C. 113 note).

tion should be implemented not later than 6 months after the date of the enactment of this Act.

9. TROOPS-TO-TEACHERS PROGRAM ACT OF 1999

Title XVII of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE XVII—TROOPS-TO-TEACHERS PROGRAM

SEC. 1701. [20 U.S.C. 9301] SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Troops-to-Teachers Program Act of 1999".

(b) DEFINITIONS.—In this title:

(1) The term "administering Secretary", with respect to the Troops-to-Teachers Program, means the following:

(A) The Secretary of Defense with respect to the Armed Forces (other than the Coast Guard) for the period beginning on the date of the enactment of this Act, and ending on the date of the completion of the transfer of responsibility for the Troops-to-Teachers Program to the Secretary of Education under section 1707.

(B) The Secretary of Transportation with respect to the Coast Guard for the period referred to in subparagraph (A).

(C) The Secretary of Education for any period after the period referred to in subparagraph (A).

(2) The term "alternative certification or licensure requirements" means State or local teacher certification or licensure requirements that permit a demonstrated competence in appropriate subject areas gained in careers outside of education to be substituted for traditional teacher training course work.

(3) The term "member of the Armed Forces" includes a former member of the Armed Forces.

(4) 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, the Republic of Palau, and the United States Virgin Islands.

SEC. 1702. [20 U.S.C. 9302] AUTHORIZATION OF TROOPS-TO-TEACHERS PROGRAM.

(a) PROGRAM AUTHORIZED.—The administering Secretary may carry out a program (to be known as the "Troops-to-Teachers Program")—

(1) to assist eligible members of the Armed Forces after their discharge or release, or retirement, from active duty to obtain certification or licensure as elementary or secondary school teachers or as vocational or technical teachers; and

(2) to facilitate the employment of such members by local educational agencies identified under subsection (b)(1).

(b) IDENTIFICATION OF LOCAL EDUCATIONAL AGENCIES WITH TEACHER SHORTAGES.—(1) In carrying out the Troops-to-Teachers Program, the administering Secretary shall periodically identify 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; or

(B) are experiencing a shortage of qualified teachers, in particular a shortage of science, mathematics, special education, or vocational or technical teachers.

(2) The administering Secretary may identify local educational agencies under paragraph (1) through surveys conducted for that purpose or by using information on local educational agencies that is available to the administering Secretary from other sources.

(c) IDENTIFICATION OF STATES WITH ALTERNATIVE CERTIFICATION REQUIREMENTS.—In carrying out the Troops-to-Teachers Program, the administering Secretary shall also conduct a survey of States to identify those States that have alternative certification or licensure requirements for teachers, including those States that grant credit for service in the Armed Forces toward satisfying certification or licensure requirements for teachers.

(d) LIMITATION ON USE OF FUNDS FOR MANAGEMENT INFRASTRUCTURE.—The administering Secretary may utilize not more than five percent of the funds available to carry out the Troops-to-Teachers Program for a fiscal year for purposes of establishing and maintaining the management infrastructure necessary to support the program.

SEC. 1703. [20 U.S.C. 9303] ELIGIBLE MEMBERS OF THE ARMED FORCES.

(a) ELIGIBLE MEMBERS.—Subject to subsection (c), the following members of the Armed Forces shall be eligible for selection to participate in the Troops-to-Teachers Program:

(1) Any member who—

(A) during the period beginning on October 1, 1990, and ending on September 30, 1999, was involuntarily discharged or released from active duty for purposes of a reduction of force after six or more years of continuous active duty immediately before the discharge or release; and

(B) satisfies such other criteria for selection as the administering Secretary may prescribe.

(2) Any member who applied for the teacher placement program administered under section 1151 of title 10, United States Code, as in effect before its repeal by section 1707, and who satisfies the eligibility criteria specified in subsection (c) of such section 1151.

(3) Any member who—

(A) on or after October 1, 1999, becomes entitled to retired or retainer pay in the manner provided in title 10 or title 14, United States Code;

(B) has the educational background required by subsection (b); and

(C) satisfies the criteria prescribed under paragraph (1)(B).

(b) EDUCATIONAL BACKGROUND.—(1) In the case of a member of the Armed Forces described in subsection (a)(3) who is applying for assistance for placement as an elementary or secondary school teacher, the administering Secretary shall require the member to have received a baccalaureate or advanced degree from an accredited institution of higher education.

(2) In the case of a member described in subsection (a)(3) who is applying for assistance for placement as a vocational or technical teacher, the administering Secretary shall require the member—

(A) to have received the equivalent of one year of college from an accredited institution of higher education and have 10 or more years of military experience in a vocational or technical field; or

(B) to otherwise meet the certification or licensure requirements for a vocational or technical teacher in the State in which the member seeks assistance for placement under the program.

(c) INELIGIBLE MEMBERS.—A member of the Armed Forces described in subsection (a) is eligible to participate in the Troops-to-Teachers Program only if the member's last period of service in the Armed Forces was characterized as honorable.

(d) INFORMATION REGARDING PROGRAM.—(1) The administering Secretary shall provide information regarding the Troops-to-Teachers Program, and make applications for the program available, to members of the Armed Forces as part of preseparation counseling provided under section 1142 of title 10, United States Code.

(2) The information provided to members shall—

(A) indicate the local educational agencies identified under section 1702(b); and

(B) identify those States surveyed under section 1702(c) that have alternative certification or licensure requirements for teachers, including those States that grant credit for service in the Armed Forces toward satisfying such requirements.

SEC. 1704. [20 U.S.C. 9304] SELECTION OF PARTICIPANTS.

(a) SUBMISSION OF APPLICATIONS.—Selection of eligible members of the Armed Forces to participate in the Troops-to-Teachers Program shall be made on the basis of applications submitted to the administering Secretary on a timely basis. An application shall be in such form and contain such information as the administering Secretary may require.

(b) TIMELY APPLICATIONS.—An application shall be considered to be submitted on a timely basis if the application is submitted as follows:

(1) In the case of a member of the Armed Forces who is eligible under section 1703(a)(1) or 1703(a)(2), not later than September 30, 2003.

(2) In the case of a member who is eligible under section 1703(a)(3), not later than four years after the date on which the member first receives retired or retainer pay under title 10 or title 14, United States Code.

(c) SELECTION PRIORITIES.—In selecting eligible members of the Armed Forces to receive assistance for placement as elementary or secondary school teachers or vocational or technical teachers, the administering Secretary shall give priority to members who—

(1) have educational or military experience in science, mathematics, special education, or vocational or technical subjects and agree to seek employment as science, mathematics, or special education teachers in elementary or secondary schools or in other schools under the jurisdiction of a local educational agency; or

(2) have educational or military experience in another subject area identified by the administering Secretary, in consultation with the National Governors Association, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(d) SELECTION SUBJECT TO FUNDING.—The administering Secretary may not select a member of the Armed Forces to participate in the Troops-to-Teachers Program unless the administering Secretary has sufficient appropriations for the program available at the time of the selection to satisfy the obligations to be incurred by the United States under section 1705 with respect to that member.

(e) PARTICIPATION AGREEMENT.—A member of the Armed Forces selected to participate in the Troops-to-Teachers Program shall be required to enter into an agreement with the administering Secretary in which the member agrees—

(1) to obtain, within such time as the administering Secretary may require, certification or licensure as an elementary or secondary school teacher or vocational or technical teacher; and

(2) to accept an offer of full-time employment as an elementary or secondary school teacher or vocational or technical teacher for not less than four school years with a local educational agency identified under section 1702, to begin the school year after obtaining that certification or licensure.

(f) EXCEPTIONS TO VIOLATION DETERMINATION.—A participant in the Troops-to-Teachers Program shall not be considered to be in violation of an agreement entered into under subsection (e) during any period in which the participant—

(1) is pursuing a full-time course of study related to the field of teaching at an eligible institution;

(2) is serving on active duty as a member of the Armed Forces;

(3) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(5) is seeking and unable to find full-time employment as a teacher in an elementary or secondary school or as a vocational or technical teacher for a single period not to exceed 27 months; or

(6) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the administering Secretary.

SEC. 1705. [20 U.S.C. 9305] STIPEND AND BONUS FOR PARTICIPANTS.

(a) STIPEND AUTHORIZED.—(1) Subject to paragraph (2), the administering Secretary shall pay to each participant in the Troops-to-Teachers Program a stipend in an amount equal to $5,000.

(2) The total number of stipends that may be paid under paragraph (1) in any fiscal year may not exceed 3,000.

(b) BONUS AUTHORIZED.—(1) Subject to paragraph (2), the administering Secretary may, in lieu of paying a stipend under subsection (a), pay a bonus of $10,000 to each participant in the Troops-to-Teachers Program who agrees under section 1704(e) to accept full-time employment as an elementary or secondary school teacher or vocational or technical teacher for not less than four years in a high need school.

(2) The total number of bonuses that may be paid under paragraph (1) in any fiscal year may not exceed 1,000.

(3) In this subsection, the term "high need school" means an elementary school or secondary school that meets one or more of the following criteria:

(A) The school has a drop out rate that exceeds the national average school drop out rate.

(B) The school has a large percentage of students (as determined by the Secretary of Education in consultation with the National Assessment Governing Board) who speak English as a second language.

(C) The school has a large percentage of students (as so determined) who are at risk of educational failure by reason of limited proficiency in English, poverty, race, geographic location, or economic circumstances.

(D) At least one-half of the students of the school are from families with an income below the poverty line (as that term is defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(E) The school has a large percentage of students (as so determined) who qualify for assistance under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(F) The school meets any other criteria established by the administering Secretary in consultation with the National Assessment Governing Board.

(c) TREATMENT OF STIPEND AND BONUS.—Stipends and bonuses paid under this section shall be taken into account in determining the eligibility of the participant concerned for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(d) REIMBURSEMENT UNDER CERTAIN CIRCUMSTANCES.—(1) If a participant in the Troops-to-Teachers Program fails to obtain teacher certification or licensure or employment as an elementary

or secondary school teacher or vocational or technical teacher as required by the agreement under section 1704(e) or voluntarily leaves, or is terminated for cause, from the employment during the four years of required service in violation of the agreement, the participant shall be required to reimburse the administering Secretary for any stipend paid to the participant under subsection (a) in an amount that bears the same ratio to the amount of the stipend as the unserved portion of required service bears to the four years of required service.

(2) If a participant in the Troops-to-Teachers Program who is paid a bonus under subsection (b) fails to obtain employment for which the bonus was paid as required by the agreement under section 1704(e), or voluntarily leaves or is terminated for cause from the employment during the four years of required service in violation of the agreement, the participant shall be required to reimburse the administering Secretary for any bonus paid to the participant under that subsection in an amount that bears the same ratio to the amount of the bonus as the unserved portion of required service bears to the four years of required service.

(3) The obligation to reimburse the administering Secretary under this subsection is, for all purposes, a debt owing the United States. A discharge in bankruptcy under title 11, United States Code, shall not release a participant from the obligation to reimburse the administering Secretary.

(4) Any amount owed by a participant under this subsection 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 participant is first notified of the amount due.

(e) EXCEPTIONS TO REIMBURSEMENT REQUIREMENT.—A participant in the Troops-to-Teachers Program shall be excused from reimbursement under subsection (d) if the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician. The administering Secretary may also waive reimbursement in cases of extreme hardship to the participant, as determined by the administering Secretary.

(f) RELATIONSHIP TO EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL.—The receipt by a participant in the Troops-to-Teachers Program of any assistance under the program shall not reduce or otherwise affect the entitlement of the participant to any benefits under chapter 30 of title 38, United States Code, or chapter 1606 of title 10, United States Code.

SEC. 1706. [20 U.S.C. 9306] PARTICIPATION BY STATES.

(a) DISCHARGE OF STATE ACTIVITIES THROUGH CONSORTIA OF STATES.—The administering Secretary may permit States participating in the Troops-to-Teachers Program to carry out activities authorized for such States under the program through one or more consortia of such States.

(b) ASSISTANCE TO STATES.—(1) Subject to paragraph (2), the administering Secretary may make grants to States participating in the Troops-to-Teachers Program, or to consortia of such States, in order to permit such States or consortia of States to operate of-

fices for purposes of recruiting eligible members of the Armed Forces for participation in the program and facilitating the employment of participants in the program in schools in such States or consortia of States.

(2) The total amount of grants under paragraph (1) in any fiscal year may not exceed $4,000,000.

SEC. 1707. [20 U.S.C. 9307] TERMINATION OF ORIGINAL PROGRAM; TRANSFER OF FUNCTIONS.

(a) TERMINATION.—(1) Section 1151 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 58 of such title is amended by striking the item relating to section 1151.

(3) The repeal of such section shall not affect the validity or terms of any agreement entered into before the date of the enactment of this Act under subsection (f) of such section, or to pay assistance, make grants, or obtain reimbursement in connection with such an agreement under subsections (g), (h), and (i) of such section, as in effect before its repeal.

(b) TRANSFER OF FUNCTIONS.—(1) The Secretary of Defense, the Secretary of Transportation, and the Secretary of Education shall provide for the transfer to the Secretary of Education of any on-going functions and responsibilities of the Secretary of Defense and the Secretary of Transportation with respect to—

(A) the program authorized by section 1151 of title 10, United States Code, before its repeal by subsection (a)(1); and

(B) the Troops-to-Teachers Program for the period beginning on the date of the enactment of this Act and ending on September 30, 2000.

(2) The Secretaries referred to in paragraph (1) shall complete the transfer under such paragraph not later than October 1, 2000.

(3) After completion of the transfer, the Secretary of Education shall discharge that Secretary's functions and responsibilities with respect to the program in consultation with the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard.

SEC. 1708. [20 U.S.C. 9308] REPORTING REQUIREMENTS.

(a) REPORT REQUIRED.—Not later than March 31, 2001, the Secretary of Education (in consultation with the Secretary of Defense and the Secretary of Transportation) and the Comptroller General shall each submit to Congress a report on the effectiveness of the Troops-to-Teachers Program in the recruitment and retention of qualified personnel by local educational agencies identified under section 1702(b).

(b) ELEMENTS OF REPORT.—The report under subsection (a) shall include information on the following:

(1) The number of participants in the Troops-to-Teachers Program.

(2) The schools in which such participants are employed.

(3) The grade levels at which such participants teach.

(4) The subject matters taught by such participants.

(5) The effectiveness of the teaching of such participants, as indicated by any relevant test scores of the students of such participants.

(6) The extent of any academic improvement in the schools in which such participants teach by reason of their teaching.

(7) The rates of retention of such participants by the local educational agencies employing such participants.

(8) The effect of any stipends or bonuses under section 1705 in enhancing participation in the program or in enhancing recruitment or retention of participants in the program by the local educational agencies employing such participants.

(9) Such other matters as the Secretary of Education or the Comptroller General, as the case may be, considers appropriate.

(c) RECOMMENDATIONS.—The report of the Comptroller General under this section shall also include any recommendations of the Comptroller General as to means of improving the Troops-to-Teachers Program, including means of enhancing the recruitment and retention of participants in the program.

SEC. 1709. [20 U.S.C. 9309] FUNDS FOR FISCAL YEAR 2000.

Of the amount authorized to be appropriated by section 301 for operation and maintenance for fiscal year 2000, $3,000,000 shall be available for purposes of carrying out the Troops-to-Teachers Program.

10. PILOT PROGRAM FOR REENGINEERING THE EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS

Section 1111 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

SEC. 1111. [10 U.S.C. 113 note] PILOT PROGRAM FOR REENGINEERING THE EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS.

(a) PILOT PROGRAM.—(1) The Secretary of Defense shall carry out a pilot program to improve processes for the resolution of equal employment opportunity complaints by civilian employees of the Department of Defense. Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission.

(2) The pilot program shall include procedures to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution.

(3) The Secretary may carry out the pilot program for a period of three years, beginning on January 1, 2001.

(4)(A) Participation in the pilot program shall be voluntary on the part of the complainant. Complainants who participate in the pilot program shall retain the right to appeal a final agency decision to the Equal Employment Opportunity Commission and to file suit in district court. The Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission.

(B) Subparagraph (A) shall apply to all cases—

(i) pending as of January 1, 2001, before the Equal Employment Opportunity Commission involving a civilian employee who filed a complaint under the pilot program of the Department of the Navy to improve processes for the resolution of equal employment opportunity complaints; and

(ii) hereinafter filed with the Commission under the pilot program established by this section.

(5) The pilot program shall be carried out in at least one military department and two Defense Agencies.

(b) REPORT.—Not later than 90 days following the end of the first and last full or partial fiscal years during which the pilot program is implemented, the Comptroller General shall submit to

Congress a report on the pilot program. Such report shall contain the following:

(1) A description of the processes tested by the pilot program.

(2) The results of such testing.

(3) Recommendations for changes to the processes for the resolution of equal employment opportunity complaints as a result of such pilot program.

(4) A comparison of the processes used, and results obtained, under the pilot program to traditional and alternative dispute resolution processes used in the government or private industry.

D. FAMILY AND SPOUSE PROVISIONS

1. SPECIAL ANNUITY PROGRAMS FOR CERTAIN SURVIVING SPOUSES NOT COVERED BY SURVIVOR BENEFIT PLAN

a. Section 4 of Public Law 92–425

(Minimum Income for Certain Widows)

SEC. 4. [10 U.S.C. 1448 note] (a) A person—

(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became a widow of a person who was entitled to retired or retainer pay when he died;

(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [38 U.S.C. 521 note]; and

(3) whose annual income, as determined in establishing that eligibility, is less than the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [subchapter II of chapter 73 of title 10, United States Code]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to re-

ceive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

(c) The amount of an annuity payable under this section, although counted as income in determining the amount of any pension described in subsection (a)(2) of this section, shall not be considered to affect the eligiblity of the recipient of such annuity for such pension, even though, as a result of including the amount of the annuity as income, no amount of such pension is due.

(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause (3) of the first section of this Act, are applicable to persons covered by this section.

(e)(1) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine with the payment under this section payment of any amount due the same person under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989 (10 U.S.C. 1448 note). If appropriate for administrative convenience (or otherwise determined appropriate by the Secretary of Veterans Affairs), that Secretary may combine a payment to any person for any month under this section [1] (and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989) with any other payment for that month under laws administered by the Secretary so as to provide that person with a single payment for that month.

(2) The Secretary concerned shall annually transfer to the Secretary of Veterans Affairs such amounts as may be necessary for payments by the Secretary of Veterans Affairs under this section and for costs of the Secretary of Veterans Affairs in administering this section. Such transfers shall be made from amounts that would otherwise be used for payment of annuities by the Secretary concerned under this section. The authority to make such a transfer is in addition to any other authority of the Secretary concerned to transfer funds for a purpose other than the purpose for which the funds were originally made available. In the case of a transfer by the Secretary of a military department, the provisions of section 2215 of title 10, United States Code, do not apply.

(3) The Secretary concerned shall promptly notify the Secretary of Veterans Affairs of any change in beneficiaries under this section.

---

b. Section 5 of the Uniformed Services Survivor Benefits Amendments of 1980

(Public Law 96–402)

SEC. 5. [10 U.S.C. 1448 note] (a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

(A) died before September 21, 1972;

---

[1] In subsection (e)(1), the words "(and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989)" were added after "under this section" by section 645(b) of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 1801). However, "under this section" appears in that subsection three times.

(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity pay to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

(d) As used in this section:

(1) The term "uniformed services" means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

(2) The term "surviving spouse" has the meaning given the terms "widow" and "widower" in section 1447 of title 10, United States Code.

(3) The term "Secretary concerned" has the meaning, given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

---

c. Section 653 of the National Defense Authorization Act, Fiscal Year 1989

(Public Law 100–456)

SEC. 653. [10 U.S.C. 1448 note] ANNUITY FOR CERTAIN SURVIVING SPOUSES

(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

(A) died before November 1, 1953; and

(B) was entitled to retired or retainer pay on the date of death.

(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annunity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of $165 per month, as adjusted from time to time under subsection (c).

(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on monthly annuity payable before any reduction under this section.

(d) RELATIONSHIP TO OTHER PROGRAMS.—(1) An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 521 note), and any payment made under the provisions of section 4 of Public Law 92–425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

(2) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine the payment under this section with the payment of any amount due the same person under section 4 of Public Law 92–425 (10 U.S.C. 1448 note), as provided in subsection (e)(1) of that section. The Secretary concerned shall transfer amounts for payments under this section to the Secretary of Veterans Affairs in the same manner as is provided under subsection (e)(2) of section 4 of Public Law 92–425 for payments under that section.

(e) DEFINITIONS.—For purposes of this section:

(1) The terms "uniformed services" and "Secretary concerned" have the meanings given those terms in section 101 of title 37, United States Code.

(2) The term "surviving spouse" has the meaning given the terms "widow" and "widower" in paragraphs (3) and (4), respectively, of section 1447 of title 10, United States Code.

(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [Sept. 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an application for such

benefit has been filed with the Secretary concerned by or on behalf of such person.

---

d. Section 635 of the National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106)

SEC. 635. [10 U.S.C. 1448 note] AUTHORITY FOR RELIEF FROM PREVIOUS OVERPAYMENTS UNDER MINIMUM INCOME WIDOWS PROGRAM.

(a) AUTHORITY.—The Secretary of Defense may waive recovery by the United States of any overpayment by the United States described in subsection (b). In the case of any such waiver, any debt to the United States arising from such overpayment is forgiven.

(b) COVERED OVERPAYMENTS.—Subsection (a) applies in the case of an overpayment by the United States that—

(1) was made before the date of the enactment of this Act under section 4 of Public Law 92–425 (10 U.S.C. 1448 note); and

(2) is attributable to failure by the Department of Defense to apply the eligibility provisions of subsection (a) of such section in the case of the person to whom the overpayment was made.

---

e. Section 644 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85)

SEC. 644. [10 U.S.C. 1448 note] ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES.

(a) SURVIVOR ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

(A) died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

(B) was a member of a reserve component of the Armed Forces before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is not eligible for an annuity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

(b) AMOUNT OF ANNUITY.—(1) An annuity under this section shall be paid at the rate of $165 per month, as adjusted from time to time under paragraph (3).

(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of any dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

(3) Whenever after the date of the enactment of this Act retired or retainer pay is increased under section 1401a(b)(2) of title

10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the amount of the monthly annuity payable before any reduction under this section.

(c) APPLICATION REQUIRED.—No benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person.

(d) DEFINITIONS.—For purposes of this section:

(1) The terms "uniformed services" and "Secretary concerned" have the meanings given such terms in section 101 of title 37, United States Code.

(2) The term "surviving spouse" has the meaning given the terms "widow" and "widower" in paragraphs (7) and (8) of section 1447 of title 10, United States Code.

(e) PROSPECTIVE APPLICABILITY.—(1) Annuities under this section shall be paid for months beginning after the month in which this Act is enacted.

(2) No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month that begins after the month in which this Act is enacted.

---

f. Section 642 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 106–261, approved Oct. 17, 1998)

SEC. 642. [10 U.S.C. 1448 note] SURVIVOR BENEFIT PLAN OPEN ENROLLMENT PERIOD.

(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (d).

(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code (or chapter 67 of such title as in effect before October 5, 1994), but for the fact that such member or former member is under 60 years of age.

(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under para-

graph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(b) MANNER OF MAKING ELECTIONS.—

(1) IN GENERAL.—An election under this section must be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Except as provided in paragraph (2), any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

(2) ELECTION MUST BE VOLUNTARY.—An election under this section is not effective unless the person making the election declares the election to be voluntary. An election to participate in the Survivor Benefit Plan under this section may not be required by any court. An election to participate or not to participate in the Survivor Benefit Plan is not subject to the concurrence of a spouse or former spouse of the person.

(c) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(d) OPEN ENROLLMENT PERIOD DEFINED.—The open enrollment period is the 1-year period beginning on March 1, 1999.

(e) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the 2-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such 2-year period.

(f) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(g) PREMIUMS FOR OPEN ENROLLMENT ELECTION.—

(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total

amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations shall be credited to the Department of Defense Military Retirement Fund.

(h) CREDIT TOWARD PAID-UP COVERAGE.—Upon payment of the total amount of the premiums charged a person under subsection (g), the retired pay of a person participating in the Survivor Benefit Plan pursuant to an election under this section shall be treated, for the purposes of subsection (j) of section 1452 of title 10, United States Code, as having been reduced under such section 1452 for the months in the period for which the person's retired pay would have been reduced if the person had elected to participate in the Survivor Benefit Plan at the first opportunity that was afforded the person to participate.

(i) DEFINITIONS.—In this section:

(1) The term "Survivor Benefit Plan" means the program established under subchapter II of chapter 73 of title 10, United States Code.

(2) The term "Supplemental Survivor Benefit Plan" means the program established under subchapter III of chapter 73 of title 10, United States Code.

(3) The term "retired pay" includes retainer pay paid under section 6330 of title 10, United States Code.

(4) The terms "uniformed services" and "Secretary concerned" have the meanings given those terms in section 101 of title 37, United States Code.

(5) The term "Department of Defense Military Retirement Fund" means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

2. DEFENSE DEPENDENTS' EDUCATION

a. Defense Dependents' Education Act of 1978

(title XIV of Public Law 95–561)

SHORT TITLE

SEC. 1401. This title may be cited as the "Defense Dependents' Education Act of 1978".

ESTABLISHMENT OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1402. [20 U.S.C. 921] (a) The Secretary of Defense shall establish and operate a program (hereinafter in this title referred to as the "defense dependents' education system") to provide a free public education through secondary school for dependents in overseas areas.

(b)(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) receive an education of high quality.

(2) In establishing the defense dependents' education system under subsection (a), the Secretary shall provide programs designed to meet the special needs of—

(A) the handicapped,

(B) individuals in need of compensatory education,

(C) individuals with an interest in vocational education,

(D) gifted and talented individuals, and

(E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

(c) The Secretary of Defense shall consult with the Secretary of Education on the educational programs and practices of the defense dependents' education system.

(d)(1) The Secretary of Defense may provide optional summer school programs in the defense dependents' education system.

(2) The Secretary shall provide in regulations for fees to be charged for the students enrolling in a summer school program under this subsection in amounts determined on the basis of family income.

(3) The amounts received by the Secretary in payment of the fees shall be available to the Department of Defense for defraying the costs of conducting summer school programs under this subsection.

ADMINISTRATION OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1403. [20 U.S.C. 922] (a) The defense dependents' education system is operated through the field activity of the Department of Defense known as the Department of Defense Education Activity. That activity is headed by a Director, who is a civilian and is selected by the Secretary of Defense. The Director reports to an Assistant Secretary of Defense designated by the Secretary of Defense for purposes of this title.

(b) Except with respect to the authority to prescribe regulations, the Secretary of Defense may carry out his functions under this title through the Director.

(c) The Director shall—

(1) establish personnel policies, consistent with the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 901 et seq.), for employees in the defense dependents' education system,

(2) have authority to transfer professional employees in the defense dependents' education system from one position to another,

(3) prepare a unified budget for each fiscal year, which shall include necessary funds for construction and operation and maintenance of facilities, for the defense dependents' education system for inclusion in the Department of Defense budget for that year,

(4) have authority to establish, in accordance with section 1410, local school advisory committees,

(5) have authority to arrange for inservice and other training programs for employees in the defense dependents' education system, and

(6) perform such other functions as may be required or delegated by the Secretary of Defense or the Assistant Secretary of Defense designated under subsection (a).

(d)(1) The Director shall establish appropriate regional or area offices in order to provide for thorough and efficient administration of the defense dependents' education system.

(2) Whenever the Department of Defense Education Activity is reorganized in a manner that affects the defense dependents' education system, the Secretary of Defense shall submit a report to the Congress describing the reorganization.

(3) Subject to the approval of the Secretary of Defense, the Department of Defense Education Activity is authorized an appropriate number of civilian employees in its central office and such regional or area office as are established pursuant to paragraph (1).

TUITION-PAYING STUDENTS

SEC. 1404. [20 U.S.C. 923] (a) Subject to subsection (b) and in accordance with regulations issued under subsection (c), the Director may authorize the enrollment in a school of the defense dependents' education system of a child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

(b)(1) Except as otherwise provided under subsection (c), any child permitted to enroll in a school of the defense dependents' edu-

cation system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents' education system to assist in defraying the cost of enrollment of children in the system under this section.

(c) The Secretary of Defense may by regulation identify classes of children who shall be eligible to enroll in schools of the defense dependents' education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

(d)(1) The Secretary of Defense may authorize the enrollment in schools of the defense dependents' education system of children in the following classes:

(A) Children of officers and employees of the United States (other than civilian officers and employees who are sponsors under section 1414(2)) stationed in overseas areas.

(B) Children of employees of contractors employed in carrying out work for the United States in overseas areas.

(C) Children of other citizens or nationals of the United States or of foreign nationals, if the Secretary determines that enrollment of such children is in the national interest.

(2) Notwithstanding subsection (c), the Secretary may not waive the tuition requirements of subsection (b)(1) with respect to children referred to in paragraph (1).

ANNUAL EDUCATIONAL ASSESSMENT

SEC. 1405. [20 U.S.C. 924] (a) The Director shall assess each year the performance of the defense dependents' education system in providing an education of high quality to children enrolled in the system. Such assessment may include the use of educational assessment measures and such other means as the Director determines to be suitable for assessing student performance.

(b) The results of each annual assessment under subsection (a) with respect to an individual enrolled in the defense dependents' education system shall be made available to the sponsor of such individual, and summary results of each such annual assessment shall be made available to Members of Congress and to professional employees in the system.

SCHOOL CONSTRUCTION BY THE DIRECTOR OF DEPENDENTS' EDUCATION

SEC. 1406. [20 U.S.C. 925] The President shall include in his budget for each fiscal year a separate request for funds for construction of school facilities by the Director.

SCHOOL SYSTEM FOR DEPENDENTS IN OVERSEAS AREAS

SEC. 1407. [20 U.S.C. 926] (a) The Secretary of Defense shall establish and operate a school system for dependents in overseas areas as part of the defense dependents' education system.

(b) TUITION AND ASSISTANCE WHEN SCHOOLS UNAVAILABLE.—(1) Under such circumstances as the Secretary of Defense may prescribe in regulations, the Secretary may provide tuition to allow dependents in an overseas area where a school operated by the Secretary is not reasonably available to attend schools other than schools established under subsection (a) on a tuition-free basis. Any school to which tuition is paid under this subsection to allow a dependent in an overseas area to attend such school shall provide an educational program satisfactory to the Secretary.

(2)(A) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service of the Navy, may provide financial assistance to sponsors of dependents in overseas areas where schools operated by the Secretary of Defense under subsection (a) are not reasonably available in order to assist the sponsors to defray the costs incurred by the sponsors for the attendance of the dependents at schools in such areas other than schools operated by the Secretary of Defense.

(B) The Secretary of Defense and the Secretary of Transportation shall each prescribe regulations relating to the availability of financial assistance under subparagraph (A). Such regulations shall, to the maximum extent practicable, be consistent with Department of State regulations relating to the availability of financial assistance for the education of dependents of Department of State personnel overseas.

(c) CONTINUATION OF ENROLLMENT FOR CERTAIN DEPENDENTS OF MEMBERS OF THE ARMED FORCES INVOLUNTARILY SEPARATED.—(1) A member of the Armed Forces serving on active duty on September 30, 1990, who is involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, and who has a dependent described in paragraph (2) who is enrolled in a school of the defense dependents' education system (or a school for which tuition is provided under subsection (b)) on the date of that separation shall be eligible to enroll or continue the enrollment of that dependent at that school (or another school serving the same community) for the final year of secondary education of that dependent in the same manner as if the member were still on active duty.

(2) A dependent referred to in paragraph (1) is a dependent who on the date of the separation of the member has completed the eleventh grade and is likely to complete secondary education within the one-year period beginning on that date.

(d) [Subsection (d) added a new section 429 (relating to travel and transportation allowances for minor dependent schooling) to title 37, United States Code.]

ELIGIBILITY FOR SCHOOL LUNCH AND BREAKFAST PROGRAMS

SEC. 1408. [Section 1408 amended the National School Lunch Act and the Child Nutrition Act of 1966.]

ALLOTMENT FORMULA

SEC. 1409. [20 U.S.C. 927] (a) The Director shall by regulation establish a formula for determining the minimum allotment of funds necessary for the operation of each school in the defense

dependents' education system. In establishing such formula, the Director shall take into consideration—

(1) the number of students served by a school and the size of the school;

(2) special cost factors for a school, including—

(A) geographic isolation of the school,

(B) a need for special staffing, transportation, or educational programs at the school, and

(C) unusual food and housing costs,

(3) the cost of providing academic services of a high quality as required by section 1402(b)(1); and

(4) such other factors as the Director considers appropriate.

(b) Any regulation under subsection (a) shall be issued, and shall become effective, in accordance with the procedures applicable to regulations required to be issued by the Secretary of Education in accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232).

(c) APPLICABILITY OF CERTAIN PROVISIONS.—

(1) CHILDREN WITH DISABILITIES.—Notwithstanding the provisions of section 1402(b)(3), the provisions of part B of the Individuals with Disabilities Education Act, other than the funding and reporting provisions, shall apply to all schools operated by the Department of Defense under this title, including the requirement that children with disabilities, aged 3 to 5, inclusive, receive a free appropriate public education.

(2) INFANTS AND TODDLERS WITH DISABILITIES.—The responsibility to provide comparable early intervention services to infants and toddlers with disabilities and their families in accordance with individualized family service plans described in section 677 of the Individuals with Disabilities Education Act and to comply with the procedural safeguards set forth in part H of such Act shall apply with respect to all eligible dependents overseas.

(3) IMPLEMENTATION.—In carrying out paragraph (2), the Secretary shall have in effect a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among Department of Defense entities involved in the provision of such services to such individuals.

SCHOOL ADVISORY COMMITTEES

SEC. 1410. [20 U.S.C. 928] (a)(1) The Director shall provide for the establishment of an advisory committee for each school in the defense dependents' education system. An advisory committee for a school shall advise the principal or superintendent of the school with respect to the operation of the school, may make recommendations with respect to curriculum and budget matters, and, except as provided under paragraph (2), shall advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander. The membership of each such advisory committee shall include an equal number of parents of students enrolled in the school and of employees working at the school and, when appropriate, may include a student en-

rolled in the school. The membership of each such advisory committee shall also include one nonvoting member designated by the organization recognized as the exclusive bargaining representative of the employees working at the school.

(2) In the case of any military installation or overseas area where there is more than one school in the defense dependents' education system, the Director shall provide for the establishment of an advisory committee for such military installation or overseas area to advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander.

(b) Except in the case of a nonvoting member designated under the last sentence of subsection (a)(1), members of a school advisory committee established under this section shall be elected by individuals of voting age residing in the area to be served by the advisory committee. The Secretary of Defense shall by regulation prescribe the qualifications for election to an advisory committee and procedures for conducting elections of advisory committee members.

(c) Members of school advisory committees established under this section shall serve without pay.

ADVISORY COUNCIL ON DEPENDENTS' EDUCATION

SEC. 1411. [20 U.S.C. 929] (a)(1) There is established in the Department of Defense an Advisory Council on Dependents' Education (hereinafter in this section referred to as the "Council"). The Council shall be composed of—

(A) the Secretary of Defense and the Secretary of Education, or their respective designees;

(B) 12 individuals appointed jointly by the Secretary of Defense and the Secretary of Education who shall be individuals who have demonstrated an interest in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the defense dependents' education system, and one student enrolled in such system; and

(C) a representative of the Secretary of Defense and of the Secretary of Education.

(2) Individuals appointed to the Council from professional employee organizations shall be individuals designated by those organizations.

(3) The Secretary of Defense, or the Secretary's designee, and the Secretary of Education, or the Secretary's designee, shall serve as cochairmen of the Council.

(4) The Director shall be the Executive Secretary of the Council.

(b) the term of office of each member of the Council appointed under subsection (a)(2) shall be three years, except that—

(1) of the members first appointed under such paragraph, four shall serve for a term of one year, four shall serve for a term of two years, and four shall serve for a term of three years, as determined by the Secretary of Defense and the Secretary of Education at the time of their appointment, and

(2) 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. No member appointed under subsection (a)(2) shall serve more than two full terms on the Council.

(c) The Council shall meet at least two times each year. The functions of the Council shall be to—

(1) recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system,

(2) provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents' education system,

(3) advise the Director on the design of the study and the selection of the contractor referred to in section 1412(a)(2) of this title, and

(4) perform such other tasks as may be required by the Secretary of Defense.

(d) Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5, United States Code, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(e) The Council shall continue in existence until terminated by law.

STUDY OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1412. [20 U.S.C. 930] (a)(1) The Director may from time to time, but not more frequently than once a year, provide for a comprehensive study of the entire defense dependents' education system. Any such study shall include a detailed analysis of the education programs and the facilities of the system.

(2) Any study under paragraph (1) shall be conducted by a contractor selected by the Director after an open competition. After conducting such study, the contractor shall submit a report to the Director describing the results of the study and giving its assessment of the defense dependents' education system.

(b) In designing the specifications for any study to be conducted pursuant to subsection (a)(1), and in selecting a contractor to conduct such study under subsection (a)(2), the Director shall consult with the Advisory Council on Dependents' Education established under section 1411 of this title.

(c) The Director shall submit to the Congress any report submitted to him under subsection (a)(2) describing the results of the

study carried out pursuant to subsection (a)(1), together with the recommendations, if any, of the contractor for legislation or any increase in funding needed to improve the defense dependents' education system. Notwithstanding any law, rule, or regulation to the contrary, such report shall not be submitted to any review before its transmittal to the Congress, but the Secretary of Defense shall, at the time of the transmittal of such report, submit to the Congress such recommendations as he may have with respect to legislation or any increase in funding needed to improve the defense dependents' education system.

REGULATIONS

SEC. 1413. [20 U.S.C. 931] The Secretary of Defense shall issue regulations to carry out this title. Such regulations shall—

(1) prescribe the educational goals and objectives of the defense dependents' education system,

(2) establish standards for the development of curricula for the system and for the selection of instructional materials,

(3) prescribe professional standards for professional personnel employed in the system,

(4) provide for arrangements between the Director and commanders of military installations for necessary logistic support for schools of the system located on military installations,

(5) provide for a recertification program for professional personnel employed in the system, and

(6) provide for such other matters as may be necessary to ensure the efficient organization and operation of the defense dependents' education system.

DEFINITIONS

SEC. 1414. [20 U.S.C. 932] For purposes of this title:

(1) The term "dependent" means a minor individual—

(A) who has not completed secondary schooling, and

(B) who is the child, stepchild, adopted child, ward, or spouse of a sponsor, or who is a resident in the household of a sponsor who stands in loco parentis to such individual and who receives one half or more of his support from such sponsor.

(2) The term "sponsor" means a person—

(A) who is—

(i) a member of the Armed Forces serving on active duty, or

(ii) a full-time civilian officer or employee of the Department of Defense and a citizen or national of the United States; and

(B) who is authorized to transport dependents to or from an overseas area at Government expense and is provided an allowance for living quarters in that area.

(3) The term "overseas area" means any area situated outside the United States.

(4) The term "United States", when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the

United States (excluding the Trust Territory of the Pacific Islands and Midway Island).

(5) The term "involuntarily separated" has the meaning given that term in section 1141 of title 10, United States Code.

(6) The term "Director" means the Director of the Department of Defense Education Activity.

EFFECTIVE DATES

SEC. 1415. [20 U.S.C. 921 note] (a)(1) Except as provided in paragraph (2) this title shall take effect on July 1, 1979.

(2) Section 1407(b) and the amendments made by section 1407(c), 1408(a), and 1408(b) shall take effect on October 1, 1978.

(b) Notwithstanding subsection (a) or any other provision of this title no provision of this title shall be construed to impair or prevent the taking effect of the provision of any other Act providing for the transfer of the functions described in this title to an executive department having responsibility for education.

---

b. Pilot Program on Private Operation of Defense Dependents' Schools

(Section 355 of the National Defense Authorization Act for Fiscal Year 1996; Public Law 104–106)

SEC. 355. [20 U.S.C. 921 note] PILOT PROGRAM ON PRIVATE OPERATION OF DEFENSE DEPENDENTS' SCHOOLS.

(a) PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program to evaluate the feasibility of using private contractors to operate schools of the defense dependents' education system established under section 1402(a) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(a)).

(b) SELECTION OF SCHOOL FOR PROGRAM.—If the Secretary conducts the pilot program, the Secretary shall select one school of the defense dependents' education system for participation in the program and provide for the operation of the school by a private contractor for not less than one complete school year.

(c) REPORT.—Not later than 30 days after the end of the first school year in which the pilot program is conducted, the Secretary shall submit to Congress a report on the results of the program. The report shall include the recommendation of the Secretary with respect to the extent to which other schools of the defense dependents' education system should be operated by private contractors.

---

c. Defense Department Overseas Teachers Pay and Personnel Practices Act

(Public Law 86–91, approved July 17, 1959)

SHORT TITLE

SECTION. 1. This Act may be cited as the "Defense Department Overseas Teachers Pay and Personnel Practices Act".

DEFINITIONS

SEC. 2. [20 U.S.C. 901] For the purposes of this Act, the term—

(1) "teaching position" means those duties and responsibilities which—

(A) are performed on a school-year basis principally in a school operated by the Department of Defense in an overseas area for dependents of members of the Armed Forces and dependents of civilian employees of the Department of Defense, or are performed by an individual who carried out certain teaching activities identified in regulations prescribed by the Secretary of Defense; and

(B) involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction; or

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity.

(2) "teacher" means an individual—

(A) who is a citizen of the United States,

(B) who is a civilian, and

(C) who is employed in a teaching position described in paragraph (1).

(3) "overseas area" means any area situated outside the United States.

(4) "United States", when used in a geographical sense, means the several States of the United States of America, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).

EXEMPTION OF TEACHERS AND TEACHING POSITIONS FROM CLASSIFICATION ACT OF 1949

[SEC. 3. Omitted—Amendment]

REGULATIONS OF SECRETARY OF DEFENSE

SEC. 4. [20 U.S.C. 902] (a) Not later than the ninetieth day following the date of enactment of this Act, the Secretary of Defense shall prescribe and issue regulations to carry out the purposes of this Act. Such regulations shall govern—

(1) the establishment of teaching positions;

(2) the fixing of basic compensation for teachers and teaching positions at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable

level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population;

(3) the entitlement of teachers to compensation;

(4) the payment of compensation to teachers;

(5) the appointment of teachers;

(6) the conditions of employment of teachers;

(7) the length of the school year or school years applicable to teaching positions;

(8) the leave system for teachers;

(9) quarters, allowances, and additional compensation for teachers; and

(10) such other matters as may be relevant and appropriate to the purposes of this Act.

(b) The regulations prescribed and issued by the Secretary of Defense under subsection (a) of this section shall become effective on such date as the Secretary of Defense shall prescribe but not later than the ninetieth day following the date of issuance of such regulations.

ADMINISTRATION

SEC. 5. [20 U.S.C. 903] (a) The Secretary of Defense shall conduct the employment and salary practices applicable to teachers and teaching positions in the Department of Defense in accordance with this Act, other applicable law, and the regulations prescribed and issued by the Secretary of Defense under section 4 of this Act.

(b) Subject to section 203 of the Classification Act of 1949 (5 U.S.C. 1083), the Secretary of Defense—

(1) shall determine the applicability of paragraph (33) of section 202 of such Act, as added by section 3 of this Act, to positions and individuals in the Department of Defense; and

(2) shall establish the appropriate annual salary rate in accordance with this Act for each such position and individual to which such paragraph (33) is determined to be applicable.

(c) The Secretary of Defense shall fix the basic compensation for teachers and teaching positions in the Department of Defense at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population.

(d) The Secretary of Defense may prescribe and issue such regulations as he deems appropriate to carry out his functions under this Act.

LEAVE

SEC. 6. [20 U.S.C. 904] (a) Subject to the regulations prescribed and issued by the Secretary of Defense under section 4 of this Act, each teacher (other than an individual employed as a substitute teacher) shall be entitled to cumulative leave, with pay, which shall accrue at the rate of one day for each calendar month, or part thereof, of a school year, except that if the school year includes more than eight months, any such teacher who shall have served for the entire school year shall be entitled to ten (or, if such teacher is employed in a supervisory position or higher, not less

than ten and not more than thirteen) days of cumulative leave with pay.

(b) Saturdays, Sundays, regularly scheduled holidays, and other administratively authorized nonwork days shall not be considered to be days of leave for the purposes of subsection (a) of this section.

(c) Subject to the regulations prescribed and issued by the Secretary of Defense, leave earned by any teacher under subsection (a) of this section may be used by such teacher—

(1) for maternity purposes,

(2) in the event of the illness of such teacher,

(3) in the event of illness, contagious disease, or death in the immediate family of such teacher, and

(4) in the event of any personal emergency.

If appropriate advance notice is given of the intended absence of a teacher, not to exceed three days of such leave may be granted for any purpose in each school year to such teacher.

(d) Any individual—

(1) who is holding a position which is determined to be a teaching position, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia who is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to a teaching position,

shall be credited, for the purposes of the leave system provided by this section, with the annual and sick leave to his credit immediately prior to the effective date of such determination, transfer, promotion, or reappointment. Sick leave so credited shall be included in the leave provided for in subsection (a) of this section. Annual leave so credited shall not be included in the leave provided for in such subsection but shall be used under regulations which shall be prescribed by the Secretary of Defense.

(e) In any case in which the amount of sick leave, which is to the credit of any individual under a different leave system immediately prior to the date on which he becomes subject as a teacher to the leave system provided by this section and which is included in the leave provided for in subsection (a) of this section, is in excess of the maximum amount of accumulated leave allowable under subparagraph (2) of such subsection, such excess shall remain to the credit of such teacher until used, but the use during any leave year of an amount in excess of the aggregate amount which shall have accrued during such year shall reduce automatically the maximum allowable amount of accumulated leave at the beginning of the next leave year until such amount no longer exceeds the maximum amount allowable under subparagraph (2) of subsection (a) of this section.

(f) Any annual leave remaining, upon his separation from the service, to the credit of an individual within the purview of this section shall be liquidated in accordance with the Act of December 21, 1944 (5 U.S.C. 61b and the following), except that leave earned or included under subsection (a) of this section shall not be liquidated.

(g) In the case of any teacher who is transferred, promoted, or reappointed, without break in service, to a position under a different leave system, the annual leave, and any other leave earned or credited under this section, which is to his credit immediately prior to such transfer, promotion, or reappointment, shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the United States Civil Service Commission.

(h) The Director of Dependents' Education, in consultation with the Director of the Office of Personnel Management—

(1) shall establish for teachers a voluntary leave transfer program similar to the one under subchapter III of chapter 63 of title 5, United States Code; and

(2) may establish for teachers a voluntary leave bank program similar to the one under subchapter IV of chapter 63 of title 5, United States Code.

Only leave described in the last sentence of subsection (c) of this section (relating to leave that may be used by a teacher for any purpose) may be transferred under any program established under this subsection.

QUARTERS, QUARTERS ALLOWANCES, AND STORAGE

SEC. 7. [20 U.S.C. 905] (a) Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to quarters, quarters allowance, and storage as provided by this section.

(b) Each teacher (other than a teacher employed in a substitute capacity) shall be entitled, for each school year for which he performs services as a teacher, to quarters or a quarters allowance equal to those authorized by the Act of June 26, 1930 (5 U.S.C. 118a).

(c) Each teacher (other than a teacher employed in a substitute capacity) who is performing services as a teacher at the close of a school year and agrees in writing to serve as a teacher for the next school year may be authorized, for the recess period immediately preceding such next school year—

(1) quarters or a quarters allowance equal to those authorized by the Act of June 26, 1930 (5 U.S.C. 118a), or

(2) in lieu of such quarters or quarters allowance, storage (including packing, drayage, unpacking, and transportation to and from storage) of his household effects and personal possessions.

(d) If a teacher does not report for service at the beginning of the next school year, he shall, except for reasons beyond his control and acceptable to the Department of Defense, be obligated to the United States in an amount equal to any quarters allowance which he may have received under subsection (c) of this section or in an amount equal to the reasonable value of any quarters or storage which he may have received under such subsection, or both, as the case may be.

(e) Quarters, quarters allowance, and storage provided under this section shall be in lieu of any quarters, quarters allowance, and storage to which he otherwise might be entitled by reason of

employment in another position during any recess period between two school years.

COST-OF-LIVING ALLOWANCE AND POST DIFFERENTIAL

SEC. 8. [20 U.S.C. 906] (a) Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to—

(1) cost-of-living allowances equal to those authorized by section 5924 of title 5, United States Code, and

(2) additional compensation equal to that authorized under section 207 of the Independent Offices Appropriation Act, 1949 (5 U.S.C. 118h).

(b) The cost-of-living allowances and additional compensation provided under subsection (a) of this section for any teacher shall be based on the teaching position in which he rendered services on a school-year basis, except that, if such teacher is employed in another position during any recess period between two school years, such allowances and compensation for such recess period shall be based on the position in which he is employed during such recess period.

DETERMINATION OF PER ANNUM SALARY RATES OF TEACHING POSITIONS FOR PURPOSES OF CLASSIFICATION ACT OF 1949

SEC. 9. For the purposes of the application of section 802(a) of the Classification Act of 1949 (5 U.S.C. 1132(a)) to any individual holding a teaching position who comes within the purview of any provision of such section 802(a), the rates of pay established for such position shall be deemed to have been increased by 20 per centum to determine the per annum salary rate of such position.

APPLICABILITY OF CERTAIN EXISTING LAW

SEC. 10. [20 U.S.C. 907] (a) The Annual and Sick Leave Act of 1951, as amended (5 U.S.C. 2061 and the following), and the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 901 and the following), shall not apply to teachers and teaching positions.

(b) In the case of any teacher who—

(1) is performing services as a teacher at the close of a school year,

(2) agrees in writing to serve as a teacher for the next school year, and

(3) is employed in another position in the recess period immediately preceding such next school year, or, during such recess period, receives quarters, allowances, or additional compensation referred to in sections 7 and 8 of this Act, or both, as the case may be,

section 301 of the Dual Compensation Act shall not apply to such teacher by reason of any such employment during a recess period or any such receipt of quarters, allowances, or additional compensation, or both, as the case may be.

(c) Notwithstanding any provision of law, employment of a teacher in the recess period between two school years in a position other than the teaching position in which he rendered service in

the school year immediately preceding such recess period shall not be subject to the Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C. 2091–2103) or to the Civil Service Retirement Act (5 U.S.C. 2251–2267).

SAVINGS PROVISION

SEC. 11. The enactment of this Act shall not affect—

(1) any teaching position existing immediately prior to the effective date of the regulations prescribed and issued by the Secretary of Defense under section 4 of this Act.

(2) the compensation attached to such teaching position, or

(3) any incumbent thereof, his appointment thereto, or his right to receive the compensation attached thereto,

until appropriate action is taken under section 5 of this Act.

EFFECTIVE DATES

SEC. 12. (a) This section and sections 1, 2, 4, and 11 shall become effective on the date of enactment of this Act.

(b) Sections 3, 5, 6, 7, 8, 9 and 10 shall become effective on the effective date of the regulations prescribed and issued by the Secretary of Defense under section 4 to this Act.

3. IMPACT AID

a. Title VIII of the Elementary and Secondary Education Act of 1965

TITLE VIII—IMPACT AID

SEC. 8001. [20 U.S.C. 7701] PURPOSE.

In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children in a manner that promotes control by local educational agencies with little or no Federal or State involvement, because certain activities of the Federal Government, such as activities to fulfill the responsibilities of the Federal Government with respect to Indian tribes and activities under section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574), place a financial burden on the local educational agencies serving areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this title to provide financial assistance to local educational agencies that—

(1) experience a substantial and continuing financial burden due to the acquisition of real property by the United States;

(2) educate children who reside on Federal property and whose parents are employed on Federal property;

(3) educate children of parents who are in the military services and children who live in low-rent housing;

(4) educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property; or

(5) need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands and because of the difficulty of raising local revenue through bond referendums for capital projects due to the inability to tax Federal property.

SEC. 8002. [20 U.S.C. 7702] PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY.

(a) IN GENERAL.—Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 2003—

(1) that the United States owns Federal property in the local educational agency, and that such property—

(A) has been acquired by the United States since 1938;

(B) was not acquired by exchange for other Federal property in the local educational agency which the United States owned before 1939; and

(C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 percent or more of the assessed value of—

(i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or

(ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

(I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and

(II) State law requires an assessment be made of property so acquired; and

(2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property,

then such agency shall be eligible to receive the amount described in subsection (b).

(b) AMOUNT.—

(1) IN GENERAL.—(A)(i)(I) Subject to subclauses (II) and (III), the amountthat a local educational agency shall be paid under subsection (a) for a fiscal year shall be calculated in accordance with paragraph (2).

(II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal year by (aa) the amount equal to the amount of revenue, if any, the agency received during the previous fiscal year from activities conducted on Federal property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency (other than the Department of Education) from such activities, by reason of receipt of such revenue, or (bb) any other amount by reason of receipt of such revenue.

(III) If the amount equal to the sum of (aa) the proposed payment under this section to a local educational agency for a fiscal year and (bb) the amount of revenue described in subclause (II)(aa) received by the agency during the previous fiscal year, exceeds the maximum amount the agency is eligible to receive under this section for the fiscal year involved, then the Secretary shall reduce the amount of the proposed payment under this section by an amount equal to such excess amount.

(ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support—

(I) the operation of a domestic dependent elementary or secondary school; or

(II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(B) If funds appropriated under section 8014(a) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall shall calculate the payment for each eligible local educational agency in accordance with subsection (h).

(C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 8003(b), exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C), or the maximum amount that such agency is eligible to receive for such fiscal year under this section, whichever is greater.

(2) APPLICATION OF CURRENT LEVIED REAL PROPERTY TAX RATE.—In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally dependent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.

(3) DETERMINATION OF AGGREGATE ASSESSED VALUE.—Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for the purpose of levying a property tax.

(c) APPLICABILITY TO TENNESSEE VALLEY AUTHORITY ACT.—For the purpose of this section, any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933 shall not be regarded as Federal property.

(d) OWNERSHIP BY UNITED STATES.—The United States shall be deemed to own Federal property for the purposes of this Act, where—

(1) prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of subparagraphs (A), (B), and (C) of subsection (a)(1); and

(2) the United States transfers a portion of the property referred to in paragraph (1) to another nontaxable entity, and the United States—

(A) restricts some or any construction on such property;

(B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;

(C) requires the grantee of the property to report to the Federal Government (or its agent) regarding information on the use of the property;

(D) except with the approval of the Federal Government (or its agent), prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease, assignment, or other disposal is to another eligible government agency; and

(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

(e) LOCAL EDUCATIONAL AGENCY CONTAINING FOREST SERVICE LAND AND SERVING CERTAIN COUNTIES.—Beginning with fiscal year 1995, a local educational agency shall be deemed to meet the requirements of subsection (a)(1)(C) if such local educational agency meets the following requirements:

(1) ACREAGE AND ACQUISITION BY THE FOREST SERVICE.—The local educational agency serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.

(2) COUNTY CHARTER.—The local educational agency serves a county chartered under State law in 1875 or 1890.

(f) SPECIAL RULE.—(1) Beginning with fiscal year 1994, and notwithstanding any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R–II School District, Wheatland, Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).

(2) For each fiscal year beginning with fiscal year 1999, the Secretary shall treat the Webster School District, Day County, South Dakota as meeting the eligibility requirements of subsection (a)(1)(C) of this section.

(3) For each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Central Union, California; Island, California; Hill City, South Dakota; and Wall, South Dakota local educational agencies as meeting the eligibility requirements of subsection (a)(1)(C) of this section.

(4) For the purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hot Springs, South Dakota local educational agency as if it had filed a timely application under section 8002 of the Elementary and Secondary Education Act of 1965 for fiscal year 1994 if the Secretary has received the fiscal year 1994 application, as well as Exhibits A and B not later than December 1, 1999.

(5) For purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hueneme, California local educational agency as if it had filed a timely application under section 8002 of the Elementary and Secondary Education Act of 1965 if the Secretary

has received the fiscal year 1995 application not later than December 1, 1999.

(g) FORMER DISTRICTS.—

(1) IN GENERAL.—Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year after fiscal year 1994 to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school districts as such agency shall designate in such election.

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—A local educational agency referred to in paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect for such fiscal year.

(h) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—For any fiscal year for which the amount appropriated under section 8014(a) is insufficient to pay to each eligible local educational agency the full amount determined under subsection (b), the Secretary shall make payments to each local educational agency under this section as follows:

(1) FOUNDATION PAYMENTS FOR PRE-1995 RECIPIENTS.—

(A) IN GENERAL.—The Secretary shall first make a foundation payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved and was eligible to receive a payment under section 2 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994) for any of the fiscal years 1989 through 1994.

(B) AMOUNT.—The amount of a payment under subparagraph (A) for a local educational agency shall be equal to 38 percent of the local educational agency's maximum entitlement amount under section 2 of the Act of September 30, 1950, for fiscal year 1994 (or if the local educational agency was not eligible to receive a payment under such section 2 for fiscal year 1994, the local educational agency's maximum entitlement amount under such section 2 for the most recent fiscal year preceding 1994).

(C) INSUFFICIENT APPROPRIATIONS.—If the amount appropriated under section 8014(a) is insufficient to pay the full amount determined under this paragraph for all eligible local educational agencies for the fiscal year, then the Secretary shall ratably reduce the payment to each local educational agency under this paragraph.

(2) PAYMENTS FOR 1995 RECIPIENTS.—

(A) IN GENERAL.—From any amounts remaining after making payments under paragraph (1) for the fiscal year involved, the Secretary shall make a payment to each eligible local educational agency that received a payment under this section for fiscal year 1995.

(B) AMOUNT.—The amount of a payment under subparagraph (A) for a local educational agency shall be determined as follows:

(i) Calculate the difference between the amount appropriated to carry out this section for fiscal year 1995 and the total amount of foundation payments made under paragraph (1) for the fiscal year.

(ii) Determine the percentage share for each local educational agency that received a payment under this section for fiscal year 1995 by dividing the assessed value of the Federal property of the local educational agency for fiscal year 1995 determined in accordance with subsection (b)(3), by the total eligible national assessed value of the eligible Federal property of all such local educational agencies for fiscal year 1995, as so determined.

(iii) Multiply the percentage share described in clause (ii) for the local educational agency by the amount determined under clause (i).

(3) SUBSECTION (i) RECIPIENTS.—From any funds remaining after making payments under paragraphs (1) and (2) for the fiscal year involved, the Secretary shall make payments in accordance with subsection (i).

(4) REMAINING FUNDS.—From any funds remaining after making payments under paragraphs (1), (2), and (3) for the fiscal year involved—

(A) the Secretary shall make a payment to each local educational agency that received a foundation payment under paragraph (1) for the fiscal year involved in an amount that bears the same relation to 25 percent of the remainder as the amount the local educational agency received under paragraph (1) for the fiscal year involved bears to the amount all local educational agencies received under paragraph (1) for the fiscal year involved; and

(B) the Secretary shall make a payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved in an amount that bears the same relation to 75 percent of the remainder as a percentage share determined for the local educational agency (in the same manner as percentage shares are determined for local educational agencies under paragraph (2)(B)(ii)) bears to the percentage share determined (in the same manner) for all local educational agencies eligible to receive a payment under this section for the fiscal year involved, except that for the purpose of calculating a local educational agency's assessed value of the Federal property, data from the most current fiscal year shall be used.

(i) SPECIAL PAYMENTS.—

(1) IN GENERAL.—For any fiscal year beginning with fiscal year 2000 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996 and for which subsection (b)(1)(B) applies, the Secretary shall use the remainder described in subsection (h)(3) for the fiscal year involved (not to exceed the amount equal to the difference between (A) the amount appropriated to carry out this section for fiscal year 1997 and (B) the amount appropriated to carry out this section for fiscal year 1996) to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) for any local educational agency described in paragraph (2).

(2) LOCAL EDUCATIONAL AGENCY DESCRIBED.—A local educational agency described in this paragraph is a local educational agency that—

(A) received a payment under this section for fiscal year 1996;

(B) serves a school district that contains all or a portion of a United States military academy;

(C) serves a school district in which the local tax assessor has certified that at least 60 percent of the real property is federally owned; and

(D) demonstrates to the satisfaction of the Secretary that such agency's per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

(j) ADDITIONAL ASSISTANCE FOR CERTAIN LOCAL EDUCATIONAL AGENCIES IMPACTED BY FEDERAL PROPERTY ACQUISITION.—

(1) RESERVATION.—From amounts appropriated under section 8014(g) for a fiscal year, the Secretary shall provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

(2) ELIGIBILITY.—A local educational agency is eligible to receive additional assistance under this subsection only if such agency—

(A) received a payment under both this section and section 8003(b) for fiscal year 1996 and is eligible to receive payments under those sections for the year of application;

(B) provided a free public education to children described under sections 8003(a)(1)(A), (B), or (D);

(C) had a military installation located within the geographic boundaries of the local educational agency that was closed as a result of base closure or realignment and, at the time at which the agency is applying for a payment under this subsection, the agency does not have a military installation located within its geographic boundaries;

(D) remains responsible for the free public education of children residing in housing located on Federal property within the boundaries of the closed military installation but whose parents are on active duty in the uniformed

services and assigned to a military activity located within the boundaries of an adjoining local educational agency; and

(E) demonstrates to the satisfaction of the Secretary that such agency's per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

(3) MAXIMUM AMOUNT.—(A) The maximum amount that a local educational agency is eligible to receive under this subsection for any fiscal year, when combined with its payment under subsection (b), shall not be more than 50 percent of the maximum amount determined under subsection (b);

(B) If funds appropriated under section 8014(g) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall ratably reduce the payment to each local education agency eligible under this subsection;

(C) If funds appropriated under section 8014(g) are in excess of the amount determined under subparagraph (A) the Secretary shall ratably distribute any excess funds to all local educational agencies eligible for payment under subsection (b) of this section.

(k) SPECIAL RULE.—For purposes of payments under this section for each fiscal year beginning with fiscal year 1998—

(1) the Secretary shall, for the Stanley County, South Dakota local educational agency, calculate payments as if subsection (e) had been in effect for fiscal year 1994; and

(2) the Secretary shall treat the Delaware Valley, Pennsylvania local educational agency as if it had filed a timely application under section 2 of Public Law 81–874 for fiscal year 1994.

(l) PRIOR YEAR DATA.—Notwithstanding any other provision of this section, in determining the eligibility of a local educational agency for a payment under subsection (b) or (h)(4)(B) of this section for a fiscal year, and in calculating the amount of such payment, the Secretary—

(1) shall use data from the prior fiscal year with respect to the Federal property involved, including data with respect to the assessed value of the property and the real property tax rate for current expenditures levied against or imputed to the property; and

(2) shall use data from the second prior fiscal year with respect to determining the amount of revenue referred to in subsection (b)(1)(A)(i).

(m) ELIGIBILITY.—

(1) OLD FEDERAL PROPERTY.—Except as provided in paragraph (2), a local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government, before the date of the enactment of the Impact Aid Reauthorization Act of 2000, shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 5 years after the date of the enactment of such Act.

(2) COMBINED FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section

for Federal property acquired by the Federal Government before the date of the enactment of the Impact Aid Reauthorization Act of 2000 shall be eligible to receive the payment if—

(A) the Federal property, when combined with other Federal property in the school district served by the local educational agency acquired by the Federal Government after the date of the enactment of such Act, meets the requirements of subsection (a); and

(B) the local educational agency submits an application for a payment under this section not later than 5 years after the date of acquisition of the Federal property acquired after the date of the enactment of such Act.

(3) NEW FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government after the date of the enactment of the Impact Aid Reauthorization Act of 2000 shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 5 years after the date of acquisition.

SEC. 8003. [20 U.S.C. 7703] PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN.

(a) COMPUTATION OF PAYMENT.—

(1) IN GENERAL.—For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b) or (d) for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education, during the preceding school year and who, while in attendance at such schools—

(A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or

(ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;

(B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code);

(C) resided on Indian lands;

(D)(i) had a parent on active duty in the uniformed services (as defined by section 101 of title 37, United States Code) but did not reside on Federal property; or

(ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;

(E) resided in low-rent housing;

(F) resided on Federal property and is not described in subparagraph (A) or (B); or

(G) resided with a parent employed on Federal property situated—

(i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or

(ii) if not in such county, in whole or in part in the same State as such agency.

(2) DETERMINATION OF WEIGHTED STUDENT UNITS.—For the purpose of computing the basic support payment under subsection (b), the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:

(A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.

(B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.

(C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .35 if the local educational agency has—

(i) a number of such children described in such subparagraphs which exceeds 6,500; and

(ii) an average daily attendance for all children which exceeds 100,000.

(D) Multiply the number of children described in subparagraph (D) of paragraph (1) by a factor of .20.

(E) Multiply the number of children described in subparagraph (E) of paragraph (1) by a factor of .10.

(F) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.

(3) SPECIAL RULE.—The Secretary shall only compute a payment for a local educational agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 1,000 or such number equals or exceeds 10 percent of the total number of students in average daily attendance in the schools of such agency.

(4) MILITARY INSTALLATION AND INDIAN HOUSING UNDERGOING RENOVATION OR REBUILDING.—

(A) IN GENERAL.—(i) For purposes of computing the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider such children to be children described in paragraph (1)(B) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of Defense, that such children would have resided in housing on Federal property in accordance with paragraph (1)(B) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).

(ii) For purposes of computing the amount of a payment for a local educational agency that received a payment for children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application, the Secretary shall consider such chil-

dren to be children described in paragraph (1)(C) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of the Interior or the Secretary of Housing and Urban Development, that such children would have resided in housing on Indian lands in accordance with paragraph (1)(C) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).

(B) LIMITATIONS.—(i)(I) Children described in paragraph (1)(D)(i) may be deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for a period not to exceed 3 fiscal years.

(II) The number of children described in paragraph (1)(D)(i) who are deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for any fiscal year may not exceed the maximum number of children who are expected to occupy that housing upon completion of the renovation or rebuilding.

(ii)(I) Children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application may be deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for a period not to exceed 3 fiscal years.

(II) The number of children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application who are deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for any fiscal year may not exceed the maximum number of children who are expected to occupy that housing upon completion of the renovation or rebuilding.

(5) MILITARY "BUILD TO LEASE" PROGRAM HOUSING.—

(A) IN GENERAL.—For purposes of computing the amount of payment for a local educational agency for children identified under paragraph (1), the Secretary shall consider children residing in housing initially acquired or constructed under the former section 2828(g) of title 10, United States Code (commonly known as the "Build to Lease" program), as added by section 801 of the Military Construction Authorization Act, 1984, to be children described under paragraph (1)(B) if the property described is within the fenced security perimeter of the military facility upon which such housing is situated.

(B) ADDITIONAL REQUIREMENTS.—If the property described in subparagraph (A) is not owned by the Federal Government, is subject to taxation by a State or political subdivision of a State, and thereby generates revenues for a local educational agency that is applying to receive a payment under this section, then the Secretary—

(i) shall require the local educational agency to provide certification from an appropriate official of the Department of Defense that the property is being used to provide military housing; and

(ii) shall reduce the amount of the payment under this section by an amount equal to the amount of revenue from such taxation received in the second preceding fiscal year by such local educational agency, unless the amount of such revenue was taken into account by the State for such second preceding fiscal year and already resulted in a reduction in the amount of State aid paid to such local educational agency.

(b) BASIC SUPPORT PAYMENTS AND PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

(1) BASIC SUPPORT PAYMENTS.—

(A) IN GENERAL.—From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a).

(B) ELIGIBILITY.—A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) only if the number of children so determined with respect to such agency amounts to the lesser of—

(i) at least 400 such children; or

(ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education.

(C) MAXIMUM AMOUNT.—The maximum amount that a local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2), multiplied by the greater of—

(i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;

(ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;

(iii) the comparable local contribution rate certified by the State, as determined under regulations

prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or

(iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.

(D) DATA.—If satisfactory data from the third preceding fiscal year are not available for any of the expenditures described in clause (i) or (ii) of subparagraph (C), the Secretary shall use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

(E) SPECIAL RULE.—For purposes of determining the comparable local contribution rate under subparagraph (C)(iii) for a local educational agency described in section 222.39(c)(3) of title 34, Code of Federal Regulations, that had its comparable local contribution rate for fiscal year 1998 calculated pursuant to section 222.39 of title 34, Code of Federal Regulations, the Secretary shall determine such comparable local contribution rate as the rate upon which payments under this subsection for fiscal year 2000 were made to the local educational agency adjusted by the percentage increase or decrease in the per pupil expenditure in the State serving the local educational agency calculated on the basis of the second most recent preceding school year compared to the third most recent preceding school year for which school year data are available.

(F) INCREASE IN LOCAL CONTRIBUTION RATE DUE TO UNUSUAL GEOGRAPHIC FACTORS.—If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subparagraph (C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency under subparagraph (C)(iii) by such an amount which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

(2) BASIC SUPPORT PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—(i) From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible heavily impacted local educational agencies with children described in subsection (a).

(ii) A local educational agency that receives a basic support payment under this paragraph for a fiscal year shall not be eligible to receive a basic support payment under paragraph (1) for that fiscal year.

(B) ELIGIBILITY FOR CONTINUING HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

(i) IN GENERAL.—A heavily impacted local educational agency is eligible to receive a basic support payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) if the agency—

(I) received an additional assistance payment under subsection (f) (as such subsection was in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000) for fiscal year 2000; and

(II)(aa) is a local educational agency whose boundaries are the same as a Federal military installation;

(bb) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency which is not less than 35 percent, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of all States (whichever average per-pupil expenditure is greater), except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement, and has a tax rate for general fund purposes which is not less than 95 percent of the average tax rate for general fund purposes of local educational agencies in the State;

(cc) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency which is not less than 30 percent, and has a tax rate for general fund purposes which is not less than 125 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State;

(dd) has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or

(ee) meets the requirements of subsection (f)(2) applying the data requirements of subsection (f)(4) (as such subsections were in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000).

(ii) LOSS OF ELIGIBILITY.—A heavily impacted local educational agency that met the requirements of clause (i) for a fiscal year shall be ineligible to receive a basic support payment under subparagraph (A) if the agency fails to meet the requirements of clause (i) for a subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

(iii) RESUMPTION OF ELIGIBILITY.—A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency meets the requirements of clause (i) for that subsequent fiscal year, except that such agency shall not receive a basic support payment under this paragraph until the fiscal year succeeding the fiscal year for which the eligibility determination is made.

(C) ELIGIBILITY FOR NEW HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

(i) IN GENERAL.—A heavily impacted local educational agency that did not receive an additional assistance payment under subsection (f) (as such subsection was in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000) for fiscal year 2000 is eligible to receive a basic support payment under subparagraph (A) for fiscal year 2002 and any subsequent fiscal year with respect to a number of children determined under subsection (a)(1) only if the agency is a local educational agency whose boundaries are the same as a Federal military installation, or the agency—

(I) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that—

(aa) is not less than 50 percent if such agency receives a payment on behalf of children described in subparagraphs (F) and (G) of such subsection; or

(bb) is not less than 40 percent if such agency does not receive a payment on behalf of such children;

(II)(aa) for a local educational agency that has a total student enrollment of 350 or more students, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located; or

(bb) for a local educational agency that has a total student enrollment of less than 350 students, has a per-pupil expenditure that is less than the average per-pupil expenditure of a comparable

local educational agency in the State in which the agency is located; and

(III) has a tax rate for general fund purposes that is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State.

(ii) RESUMPTION OF ELIGIBILITY.—A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency is a local educational agency whose boundaries are the same as a Federal military installation, or meets the requirements of clause (i), for that subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

(iii) APPLICATION.—With respect to the first fiscal year for which a heavily impacted local educational agency described in clause (i) applies for a basic support payment under subparagraph (A), or with respect to the first fiscal year for which a heavily impacted local educational agency applies for a basic support payment under subparagraph (A) after becoming ineligible under clause (i) for 1 or more preceding fiscal years, the agency shall apply for such payment at least 1 year prior to the start of that first fiscal year.

(D) MAXIMUM AMOUNT FOR REGULAR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—(i) Except as provided in subparagraph (E), the maximum amount that a heavily impacted local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2) and subject to clause (ii), multiplied by the greater of—

(I) four-fifths of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made; or

(II) four-fifths of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made.

(ii)(I) For a local educational agency with respect to which 35 percent or more of the total student enrollment of the schools of the agency are children described in subparagraph (D) or (E) (or a combination thereof) of subsection (a)(1), the Secretary shall calculate the weighted student units of such children for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 0.55.

(II) For a local educational agency that has an enrollment of 100 or fewer children described in subsection

(a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.75.

(III) For a local educational agency that has an enrollment of more than 100 but not more than 750 children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.25.

(E) MAXIMUM AMOUNT FOR LARGE HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—(i)(I) Subject to clause (ii), the maximum amount that a heavily impacted local educational agency described in subclause (II) is eligible to receive under this paragraph for any fiscal year shall be determined in accordance with the formula described in paragraph (1)(C).

(II) A heavily impacted local educational agency described in this subclause is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1).

(ii) For purposes of calculating the maximum amount described in clause (i), the factor used in determining the weighted student units under subsection (a)(2) with respect to children described in subparagraphs (A) and (B) of subsection (a)(1) shall be 1.35.

(F) DATA.—For purposes of providing assistance under this paragraph the Secretary—

(i) shall use student, revenue, expenditure, and tax data from the third fiscal year preceding the fiscal year for which the local educational agency is applying for assistance under this paragraph; and

(ii) except as provided in subparagraph (C)(i)(I), shall include all of the children described in subparagraphs (F) and (G) of subsection (a)(1) enrolled in schools of the local educational agency in determining (I) the eligibility of the agency for assistance under this paragraph, and (II) the amount of such assistance if the number of such children meet the requirements of subsection (a)(3).

(G) DETERMINATION OF AVERAGE TAX RATES FOR GENERAL FUND PURPOSES.—For the purpose of determining average tax rates for general fund purposes for local educational agencies in a State under this paragraph (except under subparagraph (C)(i)(II)(bb)), the Secretary shall use either—

(i) the average tax rate for general fund purposes for comparable local educational agencies, as determined by the Secretary in regulations; or

(ii) the average tax rate of all the local educational agencies in the State.

(3) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

(A) IN GENERAL.—For any fiscal year in which the sums appropriated under section 8014(b) are insufficient to pay to each local educational agency the full amount computed under paragraphs (1) and (2), the Secretary shall make payments in accordance with this paragraph.

(B) LEARNING OPPORTUNITY THRESHOLD PAYMENTS IN LIEU OF PAYMENTS UNDER PARAGRAPH (1).—(i) For fiscal years described in subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this title referred to as the "threshold payment") in lieu of basic support payments under paragraph (1) by multiplying the amount obtained under paragraph (1)(C) by the total percentage obtained by adding—

(I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and

(II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph, and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.

(ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.

(iii) For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency's total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).

(iv) In the case of a local educational agency that has a total student enrollment of fewer than 1,000 students and that has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located, the total percentage used to calculate threshold payments under clause (i) shall not be less than 40 percent.

(C) LEARNING OPPORTUNITY THRESHOLD PAYMENTS IN LIEU OF PAYMENTS UNDER PARAGRAPH (2).—For fiscal years

described in subparagraph (A), the learning opportunity threshold payment in lieu of basic support payments under paragraph (2) shall be equal to the amount obtained under subparagraph (D) or (E) of paragraph (2), as the case may be.

(D) RATABLE DISTRIBUTION.—For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon the computations made under subparagraphs (B) and (C).

(4) STATES WITH ONLY ONE LOCAL EDUCATIONAL AGENCY.—

(A) IN GENERAL.—In any of the 50 States of the United States in which there is only one local educational agency, the Secretary shall, for purposes of subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection, and subsection (e), consider each administrative school district in the State to be a separate local educational agency.

(B) COMPUTATION OF MAXIMUM AMOUNT OF BASIC SUPPORT PAYMENT AND THRESHOLD PAYMENT.—In computing the maximum payment amount under paragraph (1)(C) or subparagraph (D) or (E) of paragraph (2), as the case may be, and the learning opportunity threshold payment under subparagraph (B) or (C) of paragraph (3), as the case may be, for an administrative school district described in subparagraph (A)—

(i) the Secretary shall first determine the maximum payment amount and the total current expenditures for the State as a whole; and

(ii) the Secretary shall then—

(I) proportionately allocate such maximum payment amount among the administrative school districts on the basis of the respective weighted student units of such districts; and

(II) proportionately allocate such total current expenditures among the administrative school districts on the basis of the respective number of students in average daily attendance at such districts.

(5) LOCAL EDUCATIONAL AGENCIES AFFECTED BY REMOVAL OF FEDERAL PROPERTY.—

(A) IN GENERAL.—In computing the amount of a basic support payment under this subsection for a fiscal year for a local educational agency described in subparagraph (B), the Secretary shall meet the additional requirements described in subparagraph (C).

(B) LOCAL EDUCATIONAL AGENCY DESCRIBED.—A local educational agency described in this subparagraph is a local educational agency with respect to which Federal property (i) located within the boundaries of the agency, and (ii) on which one or more children reside who are receiving a free public education at a school of the agency, is transferred by the Federal Government to another entity in any fiscal year beginning on or after the date of

the enactment of the Impact Aid Reauthorization Act of 2000 so that the property is subject to taxation by the State or a political subdivision of the State.

(C) ADDITIONAL REQUIREMENTS.—The additional requirements described in this subparagraph are the following:

(i) For each fiscal year beginning after the date on which the Federal property is transferred, a child described in subparagraph (B) who continues to reside on such property and who continues to receive a free public education at a school of the agency shall be deemed to be a child who resides on Federal property for purposes of computing under the applicable subparagraph of subsection (a)(1) the amount that the agency is eligible to receive under this subsection.

(ii)(I) For the third fiscal year beginning after the date on which the Federal property is transferred, and for each fiscal year thereafter, the Secretary shall, after computing the amount that the agency is otherwise eligible to receive under this subsection for the fiscal year involved, deduct from such amount an amount equal to the revenue received by the agency for the immediately preceding fiscal year as a result of the taxable status of the former Federal property.

(II) For purposes of determining the amount of revenue to be deducted in accordance with subclause (I), the local educational agency—

(aa) shall provide for a review and certification of such amount by an appropriate local tax authority; and

(bb) shall submit to the Secretary a report containing the amount certified under item (aa).

(c) PRIOR YEAR DATA.—

(1) IN GENERAL.—Except as provided in subsections (b)(1)(D), (b)(2), and paragraph (2), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.

(2) EXCEPTION.—Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from the fiscal year for which the agency is making application for payment.

(d) CHILDREN WITH DISABILITIES.—

(1) IN GENERAL.—From the amount appropriated under section 8014(c) for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by—

(A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) who are eligible to receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and

(B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) who are eligible to receive services under such Act by a factor of 0.5.

(2) USE OF FUNDS.—A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(e) HOLD HARMLESS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the total amount the Secretary shall pay a local educational agency under subsection (b)—

(A) for fiscal year 2001 shall not be less than 85 percent of the total amount that the local educational agency received under subsections (b) and (f) for fiscal year 2000; and

(B) for fiscal year 2002 shall not be less than 70 percent of the total amount that the local educational agency received under subsections (b) and (f) for fiscal year 2000.

(2) MAXIMUM AMOUNT.—The total amount provided to a local educational agency under subparagraph (A) or (B) of paragraph (1) for a fiscal year shall not exceed the maximum basic support payment amount for such agency determined under paragraph (1) or (2) of subsection (b), as the case may be.

(3) RATABLE REDUCTIONS.—

(A) IN GENERAL.—If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) for such year, then the Secretary shall ratably reduce the payments to all such agencies for such year.

(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.

(f) OTHER FUNDS.—Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 386 of the National Defense Authorization Act for Fiscal Year 1993 or such section's successor authority.

(g) MAINTENANCE OF EFFORT.—A local educational agency may receive funds under sections 8002 and 8003(b) for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

SEC. 8004. [20 U.S.C. 7704] POLICIES AND PROCEDURES RELATING TO CHILDREN RESIDING ON INDIAN LANDS.

(a) IN GENERAL.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds

under section 8003 shall establish policies and procedures to ensure that—

(1) such children participate in programs and activities supported by such funds on an equal basis with all other children;

(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency's general educational program.

(b) RECORDS.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall maintain records demonstrating such agency's compliance with the requirements contained in subsection (a).

(c) WAIVER.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall not be required to comply with the requirements of subsections (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

(d) TECHNICAL ASSISTANCE AND ENFORCEMENT.—The Secretary shall—

(1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and

(2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.

(e) COMPLAINTS.—

(1) IN GENERAL.—(A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.

(B) Within ten working days from receipt of a complaint, the Secretary shall—

(i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other

location convenient to both the tribe, or its designee, and the local educational agency;

(ii) designate a hearing examiner to conduct the hearing; and

(iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

(2) HEARING.—The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

(3) EVIDENCE; RECOMMENDATIONS; COST.—The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.

(4) FINDINGS AND RECOMMENDATIONS.—Within 30 days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

(5) WRITTEN DETERMINATION.—Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

(6) COPIES PROVIDED.—Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

(7) CONSOLIDATION.—In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

(8) WITHHOLDING.—If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 8003 until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such with-

holding would substantially disrupt the educational programs of the local educational agency.

(9) REJECTION OF DETERMINATION.—If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 8003. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

(f) CONSTRUCTION.—This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

SEC. 8005. [20 U.S.C. 7705] APPLICATION FOR PAYMENTS UNDER SECTIONS 8002 AND 8003.

(a) IN GENERAL.—A local educational agency desiring to receive a payment under section 8002 or 8003 shall—

(1) submit an application for such payment to the Secretary; and

(2) provide a copy of such application to the State educational agency.

(b) CONTENTS.—Each such application shall be submitted in such form and manner, and shall contain such information, as the Secretary may require, including—

(1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and

(2) where applicable, an assurance that such agency is in compliance with section 8004 (relating to children residing on Indian lands).

(c) DEADLINE FOR SUBMISSION.—The Secretary shall establish deadlines for the submission of applications under this section.

(d) APPROVAL.—

(1) IN GENERAL.—The Secretary shall approve an application submitted under this section that—

(A) except as provided in paragraph (2), is filed by the deadline established under subsection (c); and

(B) otherwise meets the requirements of this title.

(2) REDUCTION IN PAYMENT.—The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c), or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be, that otherwise meets the requirements of this title, except that, notwithstanding section 8003(e), the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

(3) LATE APPLICATIONS.—

(A) NOTICE.—The Secretary shall, as soon as practicable after the deadline established under subsection (c), provide to each local educational agency that applied for a payment under section 8002 or 8003 for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which the Secretary sends the notice.

(B) ACCEPTANCE AND APPROVAL OF LATE APPLICATIONS.—The Secretary shall not accept or approve any application of a local educational agency that is filed more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to subparagraph (A).

(4) STATE APPLICATION AUTHORITY.—Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

SEC. 8006. PAYMENTS FOR SUDDEN AND SUBSTANTIAL INCREASES IN ATTENDANCE OF MILITARY DEPENDENTS.

[Repealed by section 1810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–383).**]**

SEC. 8007. [20 U.S.C. 7707] CONSTRUCTION.

(a) CONSTRUCTION PAYMENTS AUTHORIZED.—

(1) IN GENERAL.—From 40 percent of the amount appropriated for each fiscal year under section 8014(e), the Secretary shall make payments in accordance with this subsection to each local educational agency that receives a basic support payment under section 8003(b) for that fiscal year.

(2) ADDITIONAL REQUIREMENTS.—A local educational agency that receives a basic support payment under section 8003(b)(1) shall also meet at least one of the following requirements:

(A) The number of children determined under section 8003(a)(1)(C) for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

(B) The number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

(3) AMOUNT OF PAYMENTS.—

(A) LOCAL EDUCATIONAL AGENCIES IMPACTED BY MILITARY DEPENDENT CHILDREN.—The amount of a payment to each local educational agency described in this subsection that is impacted by military dependent children for a fiscal year shall be equal to—

(i)(II) 20 percent of the amount appropriated under section 8014(e) for such fiscal year; divided by

(II) the total number of weighted student units of children described in subparagraphs (B) and (D)(i) of section 8003(a)(1) for all local educational agencies described in this subsection (as calculated under section 8003(a)(2)), including the number of weighted student units of such children attending a school facility described in section 8008(a) if the Secretary does not provide assistance for the school facility under that section for the prior fiscal year; multiplied by

(ii) the total number of such weighted student units for the agency.

(B) LOCAL EDUCATIONAL AGENCIES IMPACTED BY CHILDREN WHO RESIDE ON INDIAN LANDS.—The amount of a payment to each local educational agency described in this subsection that is impacted by children who reside on Indian lands for a fiscal year shall be equal to—

(i)(I) 20 percent of the amount appropriated under section 8014(e) for such fiscal year; divided by

(II) the total number of weighted student units of children described in section 8003(a)(1)(C) for all local educational agencies described in this subsection (as calculated under section 8003(a)(2)); multiplied by

(ii) the total number of such weighted student units for the agency.

(4) USE OF FUNDS.—Any local educational agency that receives funds under this subsection shall use such funds for construction, as defined in section 8013(3).

(b) SCHOOL FACILITY MODERNIZATION GRANTS AUTHORIZED.—

(1) IN GENERAL.—From 60 percent of the amount appropriated for each fiscal year under section 8014(e), the Secretary shall award grants in accordance with this subsection to eligible local educational agencies to enable the local educational agencies to carry out modernization of school facilities.

(2) ELIGIBILITY REQUIREMENTS.—A local educational agency is eligible to receive funds under this subsection only if—

(A) such agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, such agency's fiscal agent) has no capacity to issue bonds or is at such agency's limit in bonded indebtedness for the purposes of generating funds for capital expendi-

tures, except that a local educational agency that is eligible to receive funds under section 8003(b)(2) shall be deemed to meet the requirements of this subparagraph; and

(B)(i) such agency received assistance under section 8002(a) for the fiscal year and has an assessed value of taxable property per student in the school district that is less than the average of the assessed value of taxable property per student in the State in which the local educational agency is located; or

(ii) such agency received assistance under subsection (a) for the fiscal year and has a school facility emergency, as determined by the Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

(3) AWARD CRITERIA.—In awarding grants under this subsection the Secretary shall consider one or more of the following factors:

(A) The extent to which the local educational agency lacks the fiscal capacity to undertake the modernization project without Federal assistance.

(B) The extent to which property in the local educational agency is nontaxable due to the presence of the Federal Government.

(C) The extent to which the local educational agency serves high numbers or percentages of children described in subparagraphs (A), (B), (C), and (D) of section 8003(a)(1).

(D) The need for modernization to meet—

(i) the threat that the condition of the school facility poses to the health, safety, and well-being of students;

(ii) overcrowding conditions as evidenced by the use of trailers and portable buildings and the potential for future overcrowding because of increased enrollment; and

(iii) facility needs resulting from actions of the Federal Government.

(E) The age of the school facility to be modernized.

(4) OTHER AWARD PROVISIONS.—

(A) FEDERAL SHARE.—The Federal funds provided under this subsection to a local educational agency described in subparagraph (C) shall not exceed 50 percent of the total cost of the project to be assisted under this subsection. A local educational agency may use in-kind contributions to meet the matching requirement of the preceding sentence.

(B) MAXIMUM GRANT.—A local educational agency described in subparagraph (C) may not receive a grant under this subsection in an amount that exceeds $3,000,000 during any 5-year period.

(C) LOCAL EDUCATIONAL AGENCY DESCRIBED.—A local educational agency described in this subparagraph is a local educational agency that has the authority to issue

bonds but is at such agency's limit in bonded indebtedness for the purposes of generating funds for capital expenditures.

(5) APPLICATIONS.—A local educational agency that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall contain—

(A) documentation certifying such agency's lack of bonding capacity;

(B) a listing of the school facilities to be modernized, including the number and percentage of children determined under section 8003(a)(1) in average daily attendance in each school facility;

(C) a description of the ownership of the property on which the current school facility is located or on which the planned school facility will be located;

(D) a description of any school facility deficiency that poses a health or safety hazard to the occupants of the school facility and a description of how that deficiency will be repaired;

(E) a description of the modernization to be supported with funds provided under this subsection;

(F) a cost estimate of the proposed modernization; and

(G) such other information and assurances as the Secretary may reasonably require.

(6) EMERGENCY GRANTS.—

(A) APPLICATIONS.—Each local educational agency described in paragraph (2)(B)(ii) that desires a grant under this subsection shall include in the application submitted under paragraph (5) a signed statement from an appropriate local official certifying that a health or safety deficiency exists.

(B) PRIORITY.—If the Secretary receives more than one application from local educational agencies described in paragraph (2)(B)(ii) for grants under this subsection for any fiscal year, the Secretary shall give priority to local educational agencies based on the severity of the emergency, as determined by the Secretary, and when the application was received.

(C) ALLOCATION; REPORTING REQUIREMENT.—

(i) ALLOCATION.—In awarding grants under this subsection to local educational agencies described in paragraph (2)(B)(ii), the Secretary shall consider all applications received from local educational agencies that meet the requirement of subsection (a)(2)(A) and local educational agencies that meet the requirement of subsection (a)(2)(B).

(ii) REPORTING REQUIREMENT.—

(I) IN GENERAL.—Not later than January 1 of each year, the Secretary shall prepare and submit to the appropriate congressional committees a report that contains a justification for each grant

awarded under this subsection for the prior fiscal year.

(II) DEFINITION.—In this clause, the term "appropriate congressional committees" means the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives and the Committee on Appropriations and the Committee on Health, Education, Labor and Pensions of the Senate.

(D) CONSIDERATION FOR FOLLOWING YEAR.—A local educational agency described in paragraph (2)(B)(ii) that applies for a grant under this subsection for any fiscal year and does not receive the grant shall have the application for the grant considered for the following fiscal year, subject to the priority described in subparagraph (B).

(7) SUPPLEMENT NOT SUPPLANT.—An eligible local educational agency shall use funds received under this subsection only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the modernization of school facilities used for educational purposes, and not to supplant such funds.

SEC. 8008. [20 U.S.C. 7708] FACILITIES.

(a) CURRENT FACILITIES.—From the amount appropriated for any fiscal year under section 8014(f), the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994).

(b) TRANSFER OF FACILITIES.—

(1) IN GENERAL.—The Secretary shall, as soon as practicable, transfer to the appropriate local educational agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress), or under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

(2) OTHER REQUIREMENTS.—Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this title.

SEC. 8009. [20 U.S.C. 7709] STATE CONSIDERATION OF PAYMENTS IN PROVIDING STATE AID.

(a) GENERAL PROHIBITION.—Except as provided in subsection (b), a State may not—

(1) consider payments under this title in determining for any fiscal year—

(A) the eligibility of a local educational agency for State aid for free public education; or

(B) the amount of such aid; or

(2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.

(b) STATE EQUALIZATION PLANS.—

(1) IN GENERAL.—A State may reduce State aid to a local educational agency that receives a payment under section 8002 or 8003(b) (except the amount calculated in excess of 1.0 under section 8003(a)(2)(B)) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A), that the State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in the State.

(2) COMPUTATION.—

(A) IN GENERAL.—For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than 25 percent.

(B) OTHER FACTORS.—In making a determination under this subsection, the Secretary shall—

(i) disregard local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State; and

(ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

(3) EXCEPTION.—Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each affected local educational agency the amount by which the State reduced State aid to the local educational agency.

(c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.—

(1) WRITTEN NOTICE.—

(A) IN GENERAL.—Any State that wishes to consider payments described in subsection (b)(1) in providing State aid to local educational agencies shall submit to the Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of such State's intention to do so.

(B) CONTENTS.—Such notice shall be in the form and contain the information the Secretary requires, including evidence that the State has notified each local educational agency in the State of such State's intention to consider such payments in providing State aid.

(2) OPPORTUNITY TO PRESENT VIEWS.—Before making a determination under subsection (b), the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

(3) QUALIFICATION PROCEDURES.—If the Secretary determines that a program of State aid qualifies under subsection (b), the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to any local educational agency adversely affected by such certification.

(4) NON-QUALIFICATION PROCEDURES.—If the Secretary determines that a program of State aid does not qualify under subsection (b), the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to the State, and to any local educational agency adversely affected by such determination.

(d) TREATMENT OF STATE AID.—

(1) IN GENERAL.—If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this title for any fiscal year may be taken into consideration by such State in determining the relative—

(A) financial resources available to local educational agencies in that State; and

(B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this title only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.

(2) PROHIBITION.—A State may not take into consideration payments under this title before such State's program of State aid has been certified by the Secretary under subsection (c)(3).

(e) REMEDIES FOR STATE VIOLATIONS.—

(1) IN GENERAL.—The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) or for failure to carry out an assurance under subsection (b)(3)(B), and if an administrative proceeding has not been concluded within such time, bring an

action in a United States district court against such State for such violations or failure.

(2) IMMUNITY.—A State shall not be immune under the 11th amendment to the Constitution of the United States from an action described in paragraph (1).

(3) RELIEF.—The court shall grant such relief as the court determines is appropriate.

SEC. 8010. [20 U.S.C. 7710] FEDERAL ADMINISTRATION.

(a) PAYMENTS IN WHOLE DOLLAR AMOUNTS.—The Secretary shall round any payments under this title to the nearest whole dollar amount.

(b) OTHER AGENCIES.—Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this title, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this title.

(c) SPECIAL RULES.—

(1) CERTAIN CHILDREN ELIGIBLE UNDER SUBPARAGRAPHS (A) AND (G)(ii) OF SECTION 8003(a)(1).—(A) The Secretary shall treat as eligible under subparagraph (A) of section 8003(a)(1) any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child's parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (3) of this subsection.

(B) The Secretary shall treat as eligible under subparagraph (G) of section 8003(a)(1) any child who would be eligible under such subparagraph except that such child does not meet the requirements of clause (ii) of such subparagraph, if such child meets the requirements of paragraph (3) of this subsection.

(2) REQUIREMENTS.—A child meets the requirements of this paragraph if—

(A) such child resides—

(i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or

(ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

(B) the schools of such agency are within a more reasonable commuting distance of such child's home than the schools of the local educational agency that serves the school attendance area where such child resides;

(C) attending the schools of the local educational agency that serves the school attendance area where such child resides will impose a substantial hardship on such child;

(D) the State in which such child attends school provides funds for the education of such child on the same basis as all other public school children in the State, un-

less otherwise permitted under section 8009(b) of this title; and

(E) such agency received a payment for fiscal year 1999 under section 8003(b) on behalf of children described in paragraph (1).

SEC. 8011. [20 U.S.C. 7711] ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW.

(a) ADMINISTRATIVE HEARINGS.—A local educational agency and a State that is adversely affected by any action of the Secretary under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5, United States Code if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this title.

(b) JUDICIAL REVIEW OF SECRETARIAL ACTION.—

(1) IN GENERAL.—A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) may, within 30 working days (as determined by the local educational agency or State) after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(2) FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) REVIEW.—The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

SEC. 8012. [20 U.S.C. 7712] FORGIVENESS OF OVERPAYMENTS.

Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this title, or under this title's predecessor authorities, if the Secretary determines that the overpayment was made as a result of an error made by—

(1) the Secretary; or

(2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

SEC. 8013. [20 U.S.C. 7713] DEFINITIONS.

For purposes of this title:

(1) ARMED FORCES.—The term "Armed Forces" means the Army, Navy, Air Force, and Marine Corps.

(2) AVERAGE PER-PUPIL EXPENDITURE.—The term "average per-pupil expenditure" means—

(A) the aggregate current expenditures of all local educational agencies in the State; divided by

(B) the total number of children in average daily attendance for whom such agencies provided free public education.

(3) CONSTRUCTION.—The term "construction" means—

(A) the preparation of drawings and specifications for school facilities;

(B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;

(C) inspecting and supervising the construction of school facilities; and

(D) debt service for such activities.

(4) CURRENT EXPENDITURES.—The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of title I and title VI. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

(5) FEDERAL PROPERTY.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) through (F), the term "Federal property" means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is—

(i) owned by the United States or leased by the United States from another entity;

(ii)(I) held in trust by the United States for individual Indians or Indian tribes;

(II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

(III) conveyed at any time under the Alaska Native Claims Settlement Act to a Native individual, Native group, or village or regional corporation;

(IV) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or

(V) used for low-rent housing, as described in paragraph (10), that is located on land described in subclause (I), (II), (III), or (IV) of this clause or on land that met one of those descriptions immediately before such property's use for such housing;

(iii)(I) part of a low-rent housing project assisted under the United States Housing Act of 1937;

(II) used to provide housing for homeless children at closed military installations pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act [1]; or

(III) [2] used for affordable housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996; or

(iv) owned by a foreign government or by an international organization.

(B) SCHOOLS PROVIDING FLIGHT TRAINING TO MEMBERS OF AIR FORCE.—The term "Federal property" includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.

(C) NON-FEDERAL EASEMENTS, LEASES, LICENSES, PERMITS, IMPROVEMENTS, AND CERTAIN OTHER REAL PROPERTY.—The term "Federal property" includes, whether or not subject to taxation by a State or a political subdivision of a State—

(i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;

(ii) any improvement on Federal property as otherwise described in this paragraph; and

(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

(D) CERTAIN POSTAL SERVICE PROPERTY AND PIPELINES AND UTILITY LINES.—Notwithstanding any other provision of this paragraph, the term "Federal property" does not include—

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

[2] Margin so in law.

(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

(ii) pipelines and utility lines.

(E) PROPERTY WITH RESPECT TO WHICH STATE OR LOCAL TAX REVENUES MAY NOT BE EXPENDED, ALLOCATED, OR AVAILABLE FOR FREE PUBLIC EDUCATION.—Notwithstanding any other provision of this paragraph, "Federal property" does not include any property on which children reside that is otherwise described in this paragraph if—

(i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or

(ii) no tax revenues of the State are allocated or available for the free public education of such children.

(F) PROPERTY LOCATED IN THE STATE OF OKLAHOMA OWNED BY INDIAN HOUSING AUTHORITY FOR LOW-INCOME HOUSING.—The term "Federal property" includes any real property located in the State of Oklahoma that—

(i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under or authorized by the Native American Housing Assistance and Self-Determination Act of 1996); and

(ii) at any time—

(I) was designated by treaty as tribal land; or

(II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994).

(6) FREE PUBLIC EDUCATION.—The term "free public education" means education that is provided—

(A) at public expense, under public supervision and direction, and without tuition charge; and

(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—

(i) includes preschool education; and

(ii) does not include any education provided beyond grade 12.

(7) INDIAN LANDS.—The term "Indian lands" means any Federal property described in paragraph (5)(A)(ii) or (5)(F).

(8) LOCAL CONTRIBUTION PERCENTAGE.—

(A) IN GENERAL.—The term "local contribution percentage" means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

(B) HAWAII AND DISTRICT OF COLUMBIA.—Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be

the average local contribution percentage for the 50 States and the District of Columbia.

(9) LOCAL EDUCATIONAL AGENCY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "local educational agency"—

(i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and

(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

(B) EXCEPTION.—The term "local educational agency" does not include any agency or school authority that the Secretary determines on a case-by-case basis—

(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this title or the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or increasing the amount of such assistance; or

(ii) is not constituted or reconstituted for legitimate educational purposes.

(10) LOW-RENT HOUSING.—The term "low-rent housing" means housing located on property that is described in paragraph (5)(A)(iii).

(11) MODERNIZATION.—The term "modernization" means repair, renovation, alteration, or construction, including—

(A) the concurrent installation of equipment; and

(B) the complete or partial replacement of an existing school facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the school facility.

(12) REVENUE DERIVED FROM LOCAL SOURCES.—The term "revenue derived from local sources" means—

(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency's use; or

(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

(13) SCHOOL FACILITIES.—The term "school facilities" includes—

(A) classrooms and related facilities; and

(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

SEC. 8014. [20 U.S.C. 7714] AUTHORIZATION OF APPROPRIATIONS.

(a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY.—For the purpose of making payments under section 8002, there are authorized to be appropriated $32,000,000 for fiscal year 2000 and

such sums as may be necessary for each of the three succeeding fiscal years.

(b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—For the purpose of making payments under section 8003(b), there are authorized to be appropriated $809,400,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.

(c) PAYMENTS FOR CHILDREN WITH DISABILITIES.—For the purpose of making payments under section 8003(d), there are authorized to be appropriated $50,000,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.

(e)[1] CONSTRUCTION.—For the purpose of carrying out section 8007, there are authorized to be appropriated $10,052,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.

(f) FACILITIES MAINTENANCE.—For the purpose of carrying out section 8008, there are authorized to be appropriated $5,000,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.

(g) ADDITIONAL ASSISTANCE FOR CERTAIN LOCAL EDUCATIONAL AGENCIES IMPACTED BY FEDERAL PROPERTY ACQUISITION.—For the purpose of carrying out section 8002(j) there are authorized to be appropriated $1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.

---

b. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle F—Defense Dependents Education

SEC. 362. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL YEAR 2001.—Of the amount authorized to be appropriated by section 301(5) for operation and maintenance for Defense-wide activities, $35,000,000 shall be available only for the purpose of providing educational agencies assistance (as defined in subsection (d)(1)) to local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2001, the Secretary of Defense shall notify each local educational agency that is eligible for educational agencies assistance for fiscal year 2001 of—

(1) that agency's eligibility for educational agencies assistance; and

---

[1] Section 1817(d) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by section 1 of Public Law 106–398; 114 Stat. 1654A–388) repealed subsection (d) of section 8014 of the Elementary and Secondary Education Act of 1965.

(2) the amount of the educational agencies assistance for which that agency is eligible.

(c) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term "educational agencies assistance" means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

SEC. 363. [20 U.S.C. 7703a] IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

(a) PAYMENTS.—Subject to subsection (f), the Secretary of Defense shall make a payment for fiscal years after fiscal year 2001, to each local educational agency eligible to receive a payment for a child described in subparagraph (A)(ii), (B), (D)(i) or (D)(ii) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)) that serves two or more such children with severe disabilities, for costs incurred in providing a free appropriate public education to each such child.

(b) PAYMENT AMOUNT.—The amount of the payment under subsection (a) to a local educational agency for a fiscal year for each child referred to in such subsection with a severe disability shall be—

(1) the payment made on behalf of the child with a severe disability that is in excess of the average per pupil expenditure in the State in which the local educational agency is located; less

(2) the sum of the funds received by the local educational agency—

(A) from the State in which the child resides to defray the educational and related services for such child;

(B) under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to defray the educational and related services for such child; and

(C) from any other source to defray the costs of providing educational and related services to the child which are received due to the presence of a severe disabling condition of such child.

(c) EXCLUSIONS.—No payment shall be made under subsection (a) on behalf of a child with a severe disability whose individual cost of educational and related services does not exceed—

(1) five times the national or State average per pupil expenditure (whichever is lower), for a child who is provided educational and related services under a program that is located outside the boundaries of the school district of the local educational agency that pays for the free appropriate public education of the student; or

(2) three times the State average per pupil expenditure, for a child who is provided educational and related services under

a program offered by the local educational agency, or within the boundaries of the school district served by the local educational agency.

(d) RATABLE REDUCTION.—If the amount available for a fiscal year for payments under subsection (a) is insufficient to pay the full amount all local educational agencies are eligible to receive under such subsection, the Secretary of Defense shall ratably reduce the amounts of the payments made under such subsection to all local educational agencies by an equal percentage.

(e) REPORT.—Each local educational agency desiring a payment under subsection (a) shall report to the Secretary of Defense—

(1) the number of severely disabled children for which a payment may be made under this section; and

(2) a breakdown of the average cost, by placement (inside or outside the boundaries of the school district of the local educational agency), of providing education and related services to such children.

(f) PAYMENTS SUBJECT TO APPROPRIATION.—Payments shall be made for any period in a fiscal year under this section only to the extent that funds are appropriated specifically for making such payments for that fiscal year.

(g) LOCAL EDUCATIONAL AGENCY DEFINED.—In this section, the term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

SEC. 364. ASSISTANCE FOR MAINTENANCE, REPAIR, AND RENOVATION OF SCHOOL FACILITIES THAT SERVE DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) REPAIR AND RENOVATION ASSISTANCE.—(1) During fiscal year 2001, the Secretary of Defense may make a grant to an eligible local educational agency to assist the agency to repair and renovate—

(A) an impacted school facility that is used by significant numbers of military dependent students; or

(B) a school facility that was a former Department of Defense domestic dependent elementary or secondary school.

(2) Authorized repair and renovation projects may include repairs and improvements to an impacted school facility (including the grounds of the facility) designed to ensure compliance with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or local health and safety ordinances, to meet classroom size requirements, or to accommodate school population increases.

(3) The total amount of assistance provided under this subsection to an eligible local educational agency may not exceed $2,500,000 during fiscal year 2001.

(b) MAINTENANCE ASSISTANCE.—(1) During fiscal year 2001, the Secretary of Defense may make a grant to an eligible local educational agency whose boundaries are the same as a military installation to assist the agency to maintain an impacted school facility, including the grounds of such a facility.

(2) The total amount of assistance provided under this subsection to an eligible local educational agency may not exceed $250,000 during fiscal year 2001.

(c) DETERMINATION OF ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—(1) A local educational agency is an eligible local educational agency under this section only if the Secretary of Defense determines that the local educational agency has—

(A) one or more federally impacted school facilities; and

(B) satisfies at least one of the following eligibility requirements:

(i) The local educational agency is eligible to receive assistance under subsection (f) of section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703) and at least 10 percent of the students who were in average daily attendance in the schools of such agency during the preceding school year were students described under paragraph (1)(A) or (1)(B) of section 8003(a) of the Elementary and Secondary Education Act of 1965.

(ii) At least 35 percent of the students who were in average daily attendance in the schools of the local educational agency during the preceding school year were students described under paragraph (1)(A) or (1)(B) of section 8003(a) of the Elementary and Secondary Education Act of 1965.

(iii) The State education system and the local educational agency are one and the same.

(2) A local educational agency is also an eligible local educational agency under this section if the local educational agency has a school facility that was a former Department of Defense domestic dependent elementary or secondary school, but assistance provided under subsection (a) may only be used to repair and renovate that specific facility.

(d) NOTIFICATION OF ELIGIBILITY.—Not later than April 30, 2001, the Secretary of Defense shall notify each local educational agency identified under subsection (c) that the local educational agency is eligible to apply for a grant under subsection (a), subsection (b), or both subsections.

(e) RELATION TO IMPACT AID CONSTRUCTION ASSISTANCE.—A local education agency that receives a grant under subsection (a) to repair and renovate a school facility may not also receive a payment for school construction under section 8007 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707) for fiscal year 2001.

(f) GRANT CONSIDERATIONS.—In determining which eligible local educational agencies will receive a grant under this section, the Secretary of Defense shall take into consideration the following conditions and needs at impacted school facilities of eligible local educational agencies:

(1) The repair or renovation of facilities is needed to meet State mandated class size requirements, including student-teacher ratios and instructional space size requirements.

(2) There is an increase in the number of military dependent students in facilities of the agency due to increases in unit strength as part of military readiness.

(3) There are unhoused students on a military installation due to other strength adjustments at military installations.

(4) The repair or renovation of facilities is needed to address any of the following conditions:

(A) The condition of the facility poses a threat to the safety and well-being of students.

(B) The requirements of the Americans with Disabilities Act of 1990.

(C) The cost associated with asbestos removal, energy conservation, or technology upgrades.

(D) Overcrowding conditions as evidenced by the use of trailers and portable buildings and the potential for future overcrowding because of increased enrollment.

(5) The repair or renovation of facilities is needed to meet any other Federal or State mandate.

(6) The number of military dependent students as a percentage of the total student population in the particular school facility.

(7) The age of facility to be repaired or renovated.

(g) DEFINITIONS.—In this section:

(1) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(2) IMPACTED SCHOOL FACILITY.—The term "impacted school facility" means a facility of a local educational agency—

(A) that is used to provide elementary or secondary education at or near a military installation; and

(B) at which the average annual enrollment of military dependent students is a high percentage of the total student enrollment at the facility, as determined by the Secretary of Defense.

(3) MILITARY DEPENDENT STUDENTS.—The term "military dependent students" means students who are dependents of members of the armed forces or Department of Defense civilian employees.

(4) MILITARY INSTALLATION.—The term "military installation" has the meaning given that term in section 2687(e) of title 10, United States Code.

(h) FUNDING SOURCE.—The amount authorized to be appropriated under section 301(25) for Quality of Life Enhancements, Defense-Wide, shall be available to the Secretary of Defense to make grants under this section.

---

c. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle G—Other Matters

* * * * * * *

SEC. 386. [20 U.S.C. 7703 note] ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) ASSISTANCE AUTHORIZED.—The Secretary of Defense, in consultation with the Secretary of Education, shall provide financial assistance to local educational agencies in States as provided in this section.

(b) SCHOOLS WITH SIGNIFICANT NUMBERS OF MILITARY DEPENDENT STUDENTS.—The Secretary of Defense shall provide financial assistance to an eligible local educational agency described in subsection (c) if, without such assistance, that agency will be unable (as determined by the Secretary of Defense in consultation with the Secretary of Education) to provide the students in the schools of the agency with a level of education that is equivalent to the minimum level of education available in the schools of the other local educational agencies in the same State.

(c) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—A local educational agency is eligible for assistance under subsection (b) for a fiscal year if—

(1) at least 20 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that agency during the preceding school year were military dependent students counted under section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1));

(2) there has been a significant increase, as determined by the Secretary of Defense, in the number of military dependent students in average daily attendance in the schools of that agency as a result of a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations; or

(3) by reason of a consolidation or reorganization of local educational agencies, the local educational agency is a successor of a local educational agency that, for fiscal year 1992—

(A) was eligible to receive payments in accordance with Department of Defense Instruction 1342.18, dated June 3, 1991; and

(B) satisfied the requirement in paragraph (1) or (2).

(d) ADJUSTMENTS RELATED TO BASE CLOSURES AND REALIGNMENTS.—To assist communities in making adjustments resulting from reductions in the size of the Armed Forces, the Secretary of Defense shall, in consultation with the Secretary of Education, make payments to local educational agencies that, during the period between the end of the school year preceding the fiscal year for which the payments are authorized and the beginning of the school year immediately preceding that school year, had an overall reduction of not less than 20 percent in the number of military dependent students as a result of the closure or realignment of military installations.

(e) REPORT ON IMPACT OF BASE CLOSURES ON EDUCATIONAL AGENCIES.—(1) Not later than February 15 of each of 1993, 1994, 1995, and 1996, the Secretary of Defense, in consultation with the Secretary of Education, shall submit to Congress a report on the local educational agencies affected by the closures and realignment

of military installations and by redeployments of members of the Armed Forces.

(2) Each report shall contain the following:

(A) The number of dependent children of members of the Armed Forces or civilian employees of the Department of Defense who entered the schools of the local educational agencies during the preceding school year as a result of closures, realignments, or redeployments.

(B) The number of dependent children of such members or employees who withdrew from the schools of the local educational agencies during that school year as a result of closures, realignments, or redeployments.

(C) The amounts paid to the local educational agencies during that year under the Act of September 30, 1950 (Public Law 874, Eighty-first Congress; 20 U.S.C. 236 et seq.), title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.), or any other provision of law authorizing the payment of financial assistance to local communities or local educational agencies on the basis of the presence of dependent children of such members or employees in such communities and in the schools of such agencies.

(D) The projected transfers of such members and employees in connection with closures, realignments, and redeployments during the 12-month period beginning on the date of the report, including—

(i) the installations to be closed or realigned;

(ii) the installations to which personnel will be transferred as a result of closures, realignments, and redeployments; and

(iii) the effects of such transfers on the number of dependent children who will be included in determinations with respect to the payment of funds to each affected local educational agency.

(f) FUNDING.—Of the amounts appropriated for the Department of Defense for operation and maintenance in fiscal year 1993 pursuant to the authorization of appropriations in section 301—

(1) $50,000,000 shall be available for providing assistance to local educational agencies under subsection (b); and

(2) $8,000,000 shall be available for making payments to local educational agencies under subsection (d).

(g) LIMITATION ON TRANSFER AND OBLIGATION OF FUNDS.—(1) The amount made available pursuant to subsection (f)(2) for adjustment assistance related to base closures and realignments under subsection (d) may be obligated for such adjustment assistance only if expenditures for that adjustment assistance for fiscal year 1993 have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) Not later than the third day after the date of the enactment of this Act, the Director of the Office of Management and Budget shall make a determination as to the classification by discretionary

spending limit category for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 of the amount appropriated for adjustment assistance related to base closures and realignments under subsection (d). If the Director determines that the amount shall not classify against the defense category (as described in paragraph (1)), then the President shall submit to Congress a report stating that the Director has made such a determination and the amount that will not classify against the defense category and containing an explanation for the determination.

(3) The amount listed in the report under paragraph (2) may be transferred only to the programs under title III other than the program under subsection (d) pursuant to amounts specified in appropriation Acts. Any such transfer shall be taken into account for purposes of calculating all reports under section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(h) DEFINITIONS.—In this section:

(1) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(2) The term "military dependent student" means a student that is—

(A) a dependent child of a member of the Armed Forces; or

(B) a dependent child of a civilian employee of the Department of Defense.

(3) The term "State" means each of the 50 States and the District of Columbia.

4. COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR

Section 612 of the Department of Defense Authorization Act, 1987

(Public Law 99–661; approved Nov. 14, 1986)

SEC. 612. [10 U.S.C. 113 note] COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR

The Secretary of each military department shall establish procedures to ensure that, to the maximum extent practicable within operational and other military requirements, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur at times that avoid disruption of the school schedules of such dependents.

5. REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Section 637 of the National Defense Authorization Act for Fiscal Years 1988 and 1989

(Public Law 100–180, approved Dec. 4, 1987)

SEC. 637. [10 U.S.C. 113 note] REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Not later than 60 days after the date of the enactment of this Act [Dec. 4, 1987], the Secretary of Defense shall prescribe regulations to establish the policy that—

(1) the decision by a spouse of a member of the Armed Forces to be employed or to voluntarily participate in activities relating to the Armed Forces should not be influenced by the preferences or requirements of the Armed Forces; and

(2) neither such decision nor the marital status of a member of the Armed Forces should have an effect on the assignment or promotion opportunities of the member.

6. PREVENTION OF DOMESTIC VIOLENCE

a. Section 534 of the National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

SEC. 534. [10 U.S.C. 113 note] VICTIMS' ADVOCATES PROGRAMS IN DEPARTMENT OF DEFENSE.

(a) ESTABLISHMENT.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall revise policies and regulations of the Department of Defense with respect to the programs of the Department of Defense specified in paragraph (2) in order to establish within each of the military departments a victims' advocates program.

(2) Programs referred to in paragraph (1) are the following:

(A) Victim and witness assistance programs.

(B) Family advocacy programs.

(C) Equal opportunity programs.

(3) In the case of the Department of the Navy, separate victims' advocates programs shall be established for the Navy and the Marine Corps.

(b) PURPOSE.—A victims' advocates program established pursuant to subsection (a) shall provide assistance described in subsection (d) to members of the Armed Forces and their dependents who are victims of any of the following:

(1) Crime.

(2) Intrafamilial sexual, physical, or emotional abuse.

(3) Discrimination or harassment based on race, gender, ethnic background, national origin, or religion.

(c) INTERDISCIPLINARY COUNCILS.—(1) The Secretary of Defense shall establish a Department of Defense council to coordinate and oversee the implementation of programs under subsection (a). The membership of the council shall be selected from members of the Armed Forces and officers and employees of the Department of Defense having expertise or experience in a variety of disciplines and professions in order to ensure representation of the full range of services and expertise that will be needed in implementing those programs.

(2) The Secretary of each military department shall establish similar interdisciplinary councils within that military department as appropriate to ensure the fullest coordination and effectiveness of the victims' advocates program of that military department. To the extent practicable, such a council shall be established at each significant military installation.

(d) ASSISTANCE.—(1) Under a victims' advocates program established under subsection (a), individuals working in the pro-

gram shall principally serve the interests of a victim by initiating action to provide (A) information on available benefits and services, (B) assistance in obtaining those benefits and services, and (C) other appropriate assistance.

(2) Services under such a program in the case of an individual who is a victim of family violence (including intrafamilial sexual, physical, and emotional abuse) shall be provided principally through the family advocacy programs of the military departments.

(e) STAFFING.—The Secretary of Defense shall provide for the assignment of personnel (military or civilian) on a full-time basis to victims' advocates programs established pursuant to subsection (a). The Secretary shall ensure that sufficient numbers of such full-time personnel are assigned to those programs to enable those programs to be carried out effectively.

(f) IMPLEMENTATION DEADLINE.—Subsection (a) shall be carried out not later than six months after the date of the enactment of this Act.

(g) IMPLEMENTATION REPORT.—Not later than 30 days after the date on which Department of Defense policies and regulations are revised pursuant to subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation (and plans for implementation) of this section.

---

b. Subtitle K of title V of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1997)

Subtitle K—Domestic Violence

SEC. 591. [10 U.S.C. 1562 note] DEFENSE TASK FORCE ON DOMESTIC VIOLENCE.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Department of Defense task force to be known as the Defense Task Force on Domestic Violence.

(b) STRATEGIC PLAN.—Not later than 12 months after the date on which all members of the task force have been appointed, the task force shall submit to the Secretary of Defense a long-term plan (referred to as a "strategic plan") for means by which the Department of Defense may address matters relating to domestic violence within the military more effectively. The plan shall include an assessment of, and recommendations for measures to improve, the following:

(1) Ongoing victims' safety programs.

(2) Offender accountability.

(3) The climate for effective prevention of domestic violence.

(4) Coordination and collaboration among all military organizations with responsibility or jurisdiction with respect to domestic violence.

(5) Coordination between military and civilian communities with respect to domestic violence.

(6) Research priorities.

(7) Data collection and case management and tracking.

(8) Curricula and training for military commanders.

(9) Prevention and responses to domestic violence at overseas military installations.

(10) Other issues identified by the task force relating to domestic violence within the military.

(c) REVIEW OF VICTIMS' SAFETY PROGRAM.—The task force shall review the efforts of the Secretary of Defense to establish a program for improving responses to domestic violence under section 592 and shall include in its report under subsection (e) a description of that program, including best practices identified on installations, lessons learned, and resulting policy recommendations.

(d) OTHER TASK FORCE REVIEWS.—The task force shall review and make recommendations regarding the following:

(1) Standard guidelines to be used by the Secretaries of the military departments in negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

(e) ANNUAL REPORT.—(1) The task force shall submit to the Secretary an annual report on its activities and on the activities of the military departments to respond to domestic violence in the military.

(2) The first such report shall be submitted not later than the date specified in subsection (b) and shall be submitted with the strategic plan submitted under that subsection. The task force shall include in that report the following:

(A) Analysis and oversight of the efforts of the military departments to respond to domestic violence in the military and a description of barriers to implementation of improvements in those efforts.

(B) A description of the activities and achievements of the task force.

(C) A description of successful and unsuccessful programs.

(D) A description of pending, completed, and recommended Department of Defense research relating to domestic violence.

(E) Such recommendations for policy and statutory changes as the task force considers appropriate.

(3) Each subsequent annual report shall include the following:

(A) A detailed discussion of the achievements in responses to domestic violence in the Armed Forces.

(B) Pending research on domestic violence.

(C) Any recommendations for actions to improve the responses of the Armed Forces to domestic violence in the Armed Forces that the task force considers appropriate.

(4) Within 90 days of receipt of a report under paragraph (2) or (3), the Secretary shall submit the report and the Secretary's evaluation of the report to the Committees on Armed Services of the Senate and House of Representatives. The Secretary shall include with the report the information collected pursuant to section 1562(b) of title 10, United States Code, as added by section 594.

(f) MEMBERSHIP.—(1) The task force shall consist of not more than 24 members, to be appointed by the Secretary of Defense. Members shall be appointed from each of the Army, Navy, Air Force, and Marine Corps and shall include an equal number of Department of Defense personnel (military or civilian) and persons from outside the Department of Defense. Members appointed from outside the Department of Defense may be appointed from other Federal departments and agencies, from State and local agencies, or from the private sector.

(2) The Secretary shall ensure that the membership of the task force includes a judge advocate representative from each of the Army, Navy, Air Force, and Marine Corps.

(3)(A) In consultation with the Attorney General, the Secretary shall appoint to the task force a representative or representatives from the Office of Justice Programs of the Department of Justice.

(B) In consultation with the Secretary of Health and Human Services, the Secretary shall appoint to the task force a representative from the Family Violence Prevention and Services office of the Department of Health and Human Services.

(4) Each member of the task force appointed from outside the Department of Defense shall be an individual who has demonstrated expertise in the area of domestic violence or shall be appointed from one of the following:

(A) A national domestic violence resource center established under section 308 of the Family Violence Prevention and Services Act (42 U.S.C. 10407).

(B) A national sexual assault and domestic violence policy and advocacy organization.

(C) A State domestic violence and sexual assault coalition.

(D) A civilian law enforcement agency.

(E) A national judicial policy organization.

(F) A State judicial authority.

(G) A national crime victim policy organization.

(5) The members of the task force shall be appointed not later than 90 days after the date of the enactment of this Act.

(g) CO-CHAIRS OF THE TASK FORCE.—There shall be two co-chairs of the task force. One of the co-chairs shall be designated by the Secretary of Defense at the time of appointment from among the Department of Defense personnel on the task force. The other co-chair shall be selected from among the members appointed from outside the Department of Defense by those members.

(h) ADMINISTRATIVE SUPPORT.—(1) Each member of the task force shall serve without compensation (other than the compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be), but 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, United States Code, while away from the member's home or regular places of business in the performance of services for the task force.

(2) The Assistant Secretary of Defense for Force Management Policy, under the direction of the Under Secretary of Defense for Personnel and Readiness, shall provide oversight of the task force. The Washington Headquarters Service shall provide the task force with the personnel, facilities, and other administrative support that is necessary for the performance of the task force's duties.

(3) The Assistant Secretary shall coordinate with the Secretaries of the military departments to provide visits of the task force to military installations.

(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App) shall not apply to the task force.

(j) TERMINATION.—The task force shall terminate three years after the date of the enactment of this Act [October 5, 1999].

SEC. 592. [10 U.S.C. 1562 note] INCENTIVE PROGRAM FOR IMPROVING RESPONSES TO DOMESTIC VIOLENCE INVOLVING MEMBERS OF THE ARMED FORCES AND MILITARY FAMILY MEMBERS.

(a) PURPOSE.—The purpose of this section is to provide a program for the establishment on military installations of collaborative projects involving appropriate elements of the Armed Forces and the civilian community to improve, strengthen, or coordinate prevention and response efforts to domestic violence involving members of the Armed Forces, military family members, and others.

(b) PROGRAM.—The Secretary of Defense shall establish a program to provide funds and other incentives to commanders of military installations for the following purposes:

(1) To improve coordination between military and civilian law enforcement authorities in policies, training, and responses to, and tracking of, cases involving military domestic violence.

(2) To develop, implement, and coordinate with appropriate civilian authorities tracking systems (A) for protective orders issued to or on behalf of members of the Armed Forces by civilian courts, and (B) for orders issued by military commanders to members of the Armed Forces ordering them not to have contact with a dependent.

(3) To strengthen the capacity of attorneys and other legal advocates to respond appropriately to victims of military domestic violence.

(4) To assist in educating judges, prosecutors, and legal offices in improved handling of military domestic violence cases.

(5) To develop and implement more effective policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to domestic violence.

(6) To develop, enlarge, or strengthen victims' services programs, including sexual assault and domestic violence programs, developing or improving delivery of victims' services, and providing confidential access to specialized victims' advocates.

(7) To develop and implement primary prevention programs.

(8) To improve the response of health care providers to incidents of domestic violence, including the development and implementation of screening protocols.

(c) PRIORITY.—The Secretary shall give priority in providing funds and other incentives under the program to installations at which the local program will emphasize building or strengthening partnerships and collaboration among military organizations such as family advocacy program, military police or provost marshal organizations, judge advocate organizations, legal offices, health affairs offices, and other installation-level military commands between those organizations and appropriate civilian organizations, including civilian law enforcement, domestic violence advocacy organizations, and domestic violence shelters.

(d) APPLICATIONS.—The Secretary shall establish guidelines for applications for an award of funds under the program to carry out the program at an installation.

(e) AWARDS.—The Secretary shall determine the award of funds and incentives under this section. In making a determination of the installations to which funds or other incentives are to be provided under the program, the Secretary shall consult with an award review committee consisting of representatives from the Armed Forces, the Department of Justice, the Department of Health and Human Services, and organizations with a demonstrated expertise in the areas of domestic violence and victims' safety.

SEC. 593. [10 U.S.C. 1562 note] UNIFORM DEPARTMENT OF DEFENSE POLICIES FOR RESPONSES TO DOMESTIC VIOLENCE.

(a) REQUIREMENT.—The Secretary of Defense shall prescribe the following:

(1) Standard guidelines to be used by the Secretaries of the military departments for negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

(b) DEADLINE.—The Secretary of Defense shall carry out subsection (a) not later than six months after the date on which the Secretary receives the first report of the Defense Task Force on Domestic Violence under section 591(e).

* * * * * * *

7. CHILD SUPPORT AND ALIMONY OBLIGATIONS

a. Section 363 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(Public Law 104–193, approved Aug. 22, 1996)

SEC. 363. [10 U.S.C. 113 note] ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES.

(a) AVAILABILITY OF LOCATOR INFORMATION.—

(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Transportation, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

(2) TYPE OF ADDRESS.—

(A) RESIDENTIAL ADDRESS.—Except as provided in subparagraph (B), the address for a member of the Armed Forces shown in the locator service shall be the residential address of that member.

(B) DUTY ADDRESS.—The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member—

(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

(3) UPDATING OF LOCATOR INFORMATION.—Within 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

(4) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available, on request, to the Federal Parent Locator Service established under section 453 of the Social Security Act.

(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)).

(c) PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH CHILD SUPPORT ORDERS.—[Omitted-Amendments]

---

b. Section 1061 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 1061. [5 U.S.C. 5520a note] PILOT PROGRAM ON ALTERNATIVE NOTICE OF RECEIPT OF LEGAL PROCESS FOR GARNISHMENT OF FEDERAL PAY FOR CHILD SUPPORT AND ALIMONY.

(a) PROGRAM REQUIRED.—The Secretary of Defense shall conduct a pilot program on alternative notice procedures for withholding or garnishment of pay for the payment of child support and alimony under section 459 of the Social Security Act (42 U.S.C. 659).

(b) PURPOSE.—The purpose of the pilot program is to test the efficacy of providing notice in accordance with subsection (c) to the person whose pay is to be withheld or garnished.

(c) AUTHORIZATION OF ALTERNATIVE TO PROVIDING COPY OF NOTICE OR SERVICE RECEIVED BY THE SECRETARY.—(1) Under the pilot program, whenever the Secretary of Defense (acting through the DOD section 459 agent) provides a section 459 notice to an individual, the Secretary may include as part of that notice the information specified in subsection (e) in lieu of sending with that notice a copy (otherwise required pursuant to the parenthetical phrase in section 459(c)(2)(A) of the Social Security Act) of the notice or service received by the DOD section 459 agent with respect to that individual's child support or alimony payment obligations.

(2) Under the pilot program, whenever the Secretary of Defense (acting through the DOD section 5520a agent) provides a section 5520a notice to an individual, the Secretary may include as part of that notice the information specified in subsection (e) in lieu of sending with that notice a copy (otherwise required pursuant to the second parenthetical phrase in section 5520a(c) of title 5, United States Code) of the legal process received by the DOD section 5520a agent with respect to that individual.

(d) DEFINITIONS.—For purposes of this section:

(1) DOD SECTION 459 AGENT.—The term "DOD section 459 agent" means the agent or agents designated by the Secretary of Defense under subsection (c)(1)(A) of section 459 of the Social Security Act (42 U.S.C. 659) to receive orders and accept service of process in matters related to child support or alimony.

(2) SECTION 459 NOTICE.—The term "section 459 notice" means, with respect to the Department of Defense, the notice required by subsection (c)(2)(A) of section 459 of the Social Security Act (42 U.S.C. 659) to be sent to an individual in writing upon the receipt by the DOD section 459 agent of notice or service with respect to the individual's child support or alimony payment obligations.

(3) DOD SECTION 5520A AGENT.—The term "DOD section 5520a agent" means a person who is designated by law or regulation to accept service of process to which the Department of Defense is subject under section 5520a of title 5, United States Code (including the regulations promulgated under subsection (k) of that section).

(4) SECTION 5520A NOTICE.—The term "section 5520a notice" means, with respect to the Department of Defense, the notice required by subsection (c) of section 5520a of title 5, United States Code, to be sent in writing to an employee (or, pursuant to the regulations promulgated under subsection (k) of that section, to a member of the Armed Forces) upon the receipt by the DOD section 5520a agent of legal process covered by that section.

(e) ALTERNATIVE REQUIREMENTS.—The information referred to in subsection (c) that is to be included as part of a section 459 notice or section 5520a notice sent to an individual (in lieu of sending with that notice a copy of the notice or service received by the DOD section 459 agent or the DOD section 5520a agent) is the following:

(1) A description of the pertinent court order, notice to withhold, or other order, process, or interrogatory received by the DOD section 459 agent or the DOD section 5520a agent.

(2) The identity of the court or judicial forum involved and (in the case of a notice or process concerning the ordering of a support or alimony obligation) the case number, the amount of the obligation, and the name of the beneficiary.

(3) Information on how the individual may obtain from the Department of Defense a copy of the notice, service, or legal process, including an address and telephone number that the individual may be contacted for the purpose of obtaining such a copy.

(f) PERIOD OF PILOT PROGRAM.—The Secretary shall commence the pilot program not later than 90 days after the date of the enactment of this Act. The pilot program shall terminate on September 30, 2001.

(g) REPORT.—Not later than January 1, 2001, the Secretary shall submit to Congress a report describing the experience of the Department of Defense under the authority provided by this section. The report shall include the following:

(1) The number of section 459 notices provided by the DOD section 459 agent during the period the authority provided by this section was in effect.

(2) The number of individuals who requested the DOD section 459 agent to provide to them a copy of the actual notice or service.

(3) Any complaint the Secretary received by reason of not having provided the actual notice or service in the section 459 notice.

(4) The number of section 5520a notices provided by the DOD section 5520a agent during the period the authority provided by this section was in effect.

(5) The number of individuals who requested the DOD section 5520a agent to provide to them a copy of the actual legal process.

(6) Any complaint the Secretary received by reason of not having provided the actual legal process in the section 5520a notice.

E. HEALTH CARE MATTERS

1. MILITARY USE OF FORMER PUBLIC HEALTH SERVICE HOSPITALS

Subtitle C of title VII of the National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle C—Uniformed Services Treatment Facilities

SEC. 721. [10 U.S.C. 1073 note] DEFINITIONS.

In this subtitle:

(1) The term "administering Secretaries" means the Secretary of Defense, the Secretary of Transportation, and the Secretary of Health and Human Services.

(2) The term "agreement" means the agreement required under section 722(b) between the Secretary of Defense and a designated provider.

(3) The term "capitation payment" means an actuarially sound payment for a defined set of health care services that is established on a per enrollee per month basis.

(4) The term "covered beneficiary" means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

(5) The term "designated provider" means a public or nonprofit private entity that was a transferee of a Public Health Service hospital or other station under section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 42 U.S.C. 248b) and that, before the date of the enactment of this Act, was deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code. The term includes any legal successor in interest of the transferee.

(6) The term "enrollee" means a covered beneficiary who enrolls with a designated provider.

(7) The term "health care services" means the health care services provided under the health plan known as the "TRICARE PRIME" option under the TRICARE program.

(8) The term "Secretary" means the Secretary of Defense.

(9) The term "TRICARE program" means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United

States Code, principally section 1097 of such 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.

SEC. 722. [10 U.S.C. 1073 note] INCLUSION OF DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM.

(a) INCLUSION IN SYSTEM.—The health care delivery system of the uniformed services shall include the designated providers.

(b) AGREEMENTS TO PROVIDE MANAGED HEALTH CARE SERVICES.—(1) After consultation with the other administering Secretaries, the Secretary of Defense shall negotiate and enter into an agreement with each designated provider under which the designated provider will provide health care services in or through managed care plans to covered beneficiaries who enroll with the designated provider.

(2) The agreement shall be entered into on a sole source basis. The Federal Acquisition Regulation, except for those requirements regarding competition, issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) shall apply to the agreements as acquisitions of commercial items.

(3) The implementation of an agreement is subject to availability of funds for such purpose.

(c) EFFECTIVE DATE OF AGREEMENTS.—(1) Unless an earlier effective date is agreed upon by the Secretary and the designated provider, the agreement shall take effect upon the later of the following:

(A) The date on which a managed care support contract under the TRICARE program is implemented in the service area of the designated provider.

(B) October 1, 1997.

(2) The Secretary may modify the effective date established under paragraph (1) for an agreement to permit a transition period of not more than six months between the date on which the agreement is executed by the parties and the date on which the designated provider commences the delivery of health care services under the agreement.

(d) TEMPORARY CONTINUATION OF EXISTING PARTICIPATION AGREEMENTS.—The Secretary shall extend the participation agreement of a designated provider in effect immediately before the date of the enactment of this Act under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 42 U.S.C. 248c) until the agreement required by this section takes effect under subsection (c), including any transitional period provided by the Secretary under paragraph (2) of such subsection.

(e) SERVICE AREA.—The Secretary may not reduce the size of the service area of a designated provider below the size of the service area in effect as of September 30, 1996.

(f) COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS.—(1) Unless otherwise agreed upon by the Secretary and a designated provider, the designated provider shall comply with necessary and appropriate administrative requirements established by the Secretary for other providers of health care services and requirements established by the Secretary of Health and Human Services for

risk-sharing contractors under section 1876 of the Social Security Act (42 U.S.C. 1395mm). The Secretary and the designated provider shall determine and apply only such administrative requirements as are minimally necessary and appropriate. A designated provider shall not be required to comply with a law or regulation of a State government requiring licensure as a health insurer or health maintenance organization.

(2) A designated provider may not contract out more than five percent of its primary care enrollment without the approval of the Secretary, except in the case of primary care contracts between a designated provider and a primary care contractor in force on the date of the enactment of this Act.

(g) CONTINUED ACQUISITION OF REDUCED-COST DRUGS.—A designated provider shall be treated as part of the Department of Defense for purposes of section 8126 of title 38, United States Code, in connection with the provision by the designated provider of health care services to covered beneficiaries pursuant to the participation agreement of the designated provider under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 42 U.S.C. 248c note) or pursuant to the agreement entered into under subsection (b).

SEC. 723. [10 U.S.C. 1073 note] PROVISION OF UNIFORM BENEFIT BY DESIGNATED PROVIDERS.

(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees the health benefit option prescribed and implemented by the Secretary under section 731 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 1073 note), including accompanying cost-sharing requirements.

(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees upon the later of the following:

(1) The date on which health care services within the health care delivery system of the uniformed services are rendered through the TRICARE program in the region in which the designated provider operates.

(2) October 1, 1997.

(c) ADJUSTMENTS.—The Secretary may establish a later date under subsection (b)(2) or prescribe reduced cost-sharing requirements for enrollees.

SEC. 724. [10 U.S.C. 1073 note] ENROLLMENT OF COVERED BENEFICIARIES.

(a) FISCAL YEAR 1997 LIMITATION.—(1) During fiscal year 1997, the number of covered beneficiaries who are enrolled in managed care plans offered by designated providers may not exceed the number of such enrollees as of October 1, 1995.

(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care under section 1074(a) of title 10, United States Code.

(b) PERMANENT LIMITATION.—For each fiscal year beginning after September 30, 1997, the number of enrollees in managed care plans offered by designated providers may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

(c) RETENTION OF CURRENT ENROLLEES.—An enrollee in the managed care plan of a designated provider as of September 30, 1997, or such earlier date as the designated provider and the Secretary may agree upon, shall continue receiving services from the designated provider pursuant to the agreement entered into under section 722 unless the enrollee disenrolls from the designated provider. Except as provided in subsection (e), the administering Secretaries may not disenroll such an enrollee unless the disenrollment is agreed to by the Secretary and the designated provider.

(d) ADDITIONAL ENROLLMENT AUTHORITY.—Other covered beneficiaries may also receive health care services from a designated provider, except that the designated provider may market such services to, and enroll, only those covered beneficiaries who—

(1) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services; or

(2) are enrolled in the direct care system under the TRICARE program, regardless of whether the covered beneficiaries were users of the health care delivery system of the uniformed services in prior years.

(e) SPECIAL RULE FOR MEDICARE-ELIGIBLE BENEFICIARIES.—If a covered beneficiary who desires to enroll in the managed care program of a designated provider is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), the covered beneficiary shall elect whether to receive health care services as an enrollee or under part A of title XVIII of the Social Security Act. The Secretary may disenroll an enrollee who subsequently violates the election made under this subsection and receives benefits under part A of title XVIII of the Social Security Act.

(f) INFORMATION REGARDING ELIGIBLE COVERED BENEFICIARIES.—The Secretary shall provide, in a timely manner, a designated provider with an accurate list of covered beneficiaries within the marketing area of the designated provider to whom the designated provider may offer enrollment.

(g) OPEN ENROLLMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program under which covered beneficiaries shall be permitted to enroll at any time in a managed care plan offered by a designated provider consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program, but without regard to the limitation in subsection (b). The demonstration program under this subsection shall cover designated providers, selected by the Secretary of Defense, and the service areas of the designated providers.

(2) The demonstration program carried out under this section shall commence on October 1, 1999, and end on September 30, 2001.

(3) Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program carried out under this subsection. The report shall include, at a minimum, an evaluation of the benefits of the open enrollment opportunity to covered beneficiaries and a recommendation on whether to authorize open enrollments in the managed care plans of designated providers permanently.

SEC. 725. [10 U.S.C. 1073 note] APPLICATION OF CHAMPUS PAYMENT RULES.

(a) APPLICATION OF PAYMENT RULES.—Subject to subsection (b), the Secretary shall require a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services to apply the payment rules described in section 1074(c) of title 10, United States Code, in imposing charges for health care that the private facility or provider provides to enrollees of a designated provider.

(b) AUTHORIZED ADJUSTMENTS.—The payment rules imposed under subsection (a) shall be subject to such modifications as the Secretary considers appropriate. The Secretary may authorize a lower rate than the maximum rate that would otherwise apply under subsection (a) if the lower rate is agreed to by the designated provider and the private facility or health care provider.

(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section after consultation with the other administering Secretaries.

(d) CONFORMING AMENDMENT.—Section 1074 of title 10, United States Code, is amended by striking out subsection (d).

SEC. 726. [10 U.S.C. 1073 note] PAYMENTS FOR SERVICES.

(a) FORM OF PAYMENT.—Unless otherwise agreed to by the Secretary and a designated provider, the form of payment for health care services provided by a designated provider shall be on a full risk capitation payment basis. The capitation payments shall be negotiated and agreed upon by the Secretary and the designated provider. In addition to such other factors as the parties may agree to apply, the capitation payments shall be based on the utilization experience of enrollees and competitive market rates for equivalent health care services for a comparable population to such enrollees in the area in which the designated provider is located.

(b) LIMITATION ON TOTAL PAYMENTS.—Total capitation payments for health care services to a designated provider shall not exceed an amount equal to the cost that would have been incurred by the Government if the enrollees had received such health care services through a military treatment facility, the TRICARE program, or the Medicare program, as the case may be. In establishing the ceiling rate for enrollees with the designated providers who are also eligible for the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense shall take into account the health status of the enrollees.

(c) ESTABLISHMENT OF PAYMENT RATES ON ANNUAL BASIS.—The Secretary and a designated provider shall establish capitation payments on an annual basis, subject to periodic review for actuarial soundness and to adjustment for any adverse or favorable se-

lection reasonably anticipated to result from the design of the program under this subtitle.

(d) ALTERNATIVE BASIS FOR CALCULATING PAYMENTS.—After September 30, 1999, the Secretary and a designated provider may mutually agree upon a new basis for calculating capitation payments.

SEC. 727. [10 U.S.C. 1073 note] REPEAL OF SUPERSEDED AUTHORITIES.

(a) REPEALS.—The following provisions of law are repealed:

(1) Section 911 of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c).

(2) Section 1252 of the Department of Defense Authorization Act, 1984 (42 U.S.C. 248d).

(3) Section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 42 U.S.C. 248c note).

(4) Section 726 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 42 U.S.C. 248c note).

(b) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) of subsection (a) shall take effect on October 1, 1997.

2. HEALTH CARE ISSUES REGARDING GULF WAR VETERANS

a. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 743. [10 U.S.C. 1074 note] INDEPENDENT RESEARCH REGARDING GULF WAR SYNDROME.

(a) DEFINITIONS.—For purposes of this section:

(1) The term "Gulf War service" means service on active duty as a member of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The term "Gulf War syndrome" means the complex of illnesses and symptoms commonly known as Gulf War syndrome.

(3) The term "Persian Gulf War" has the meaning given that term in section 101(33) of title 38, United States Code.

(b) RESEARCH.—The Secretary of Defense shall provide, by contract, grant, or other transaction, for scientific research to be carried out by entities independent of the Federal Government on possible causal relationships between Gulf War syndrome and—

(1) the possible exposures of members of the Armed Forces to chemical warfare agents or other hazardous materials during Gulf War service; and

(2) the use by the Department of Defense during the Persian Gulf War of combinations of various inoculations and investigational new drugs.

(c) PROCEDURES FOR AWARDING GRANTS.—The Secretary shall prescribe the procedures to be used to make research awards under subsection (b). The procedures shall—

(1) include a comprehensive, independent peer-review process for the evaluation of proposals for scientific research that are submitted to the Department of Defense; and

(2) provide for the final selection of proposals for award to be based on the scientific merit and program relevance of the proposed research.

(d) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated under section 301(21) for defense medical programs, $10,000,000 is available for research under subsection (b).

b. Persian Gulf War Veterans' Benefits Act

(Title I of Public Law 103–446, approved Nov. 2, 1994)

TITLE I—PERSIAN GULF WAR VETERANS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Persian Gulf War Veterans' Benefits Act".

SEC. 102. [38 U.S.C. 1117 note] FINDINGS.

The Congress makes the following findings:

(1) During the Persian Gulf War, members of the Armed Forces were exposed to numerous potentially toxic substances, including fumes and smoke from military operations, oil well fires, diesel exhaust, paints, pesticides, depleted uranium, infectious agents, investigational drugs and vaccines, and indigenous diseases, and were also given multiple immunizations. It is not known whether these servicemembers were exposed to chemical or biological warfare agents. However, threats of enemy use of chemical and biological warfare heightened the psychological stress associated with the military operation.

(2) Significant numbers of veterans of the Persian Gulf War are suffering from illnesses, or are exhibiting symptoms of illness, that cannot now be diagnosed or clearly defined. As a result, many of these conditions or illnesses are not considered to be service connected under current law for purposes of benefits administered by the Department of Veterans Affairs.

(3) The National Institutes of Health Technology Assessment Workshop on the Persian Gulf Experience and Health, held in April 1994, concluded that the complex biological, chemical, physical, and psychological environment of the Southwest Asia theater of operations produced complex adverse health effects in Persian Gulf War veterans and that no single disease entity or syndrome is apparent. Rather, it may be that the illnesses suffered by those veterans result from multiple illnesses with overlapping symptoms and causes that have yet to be defined.

(4) That workshop concluded that the information concerning the range and intensity of exposure to toxic substances by military personnel in the Southwest Asia theater of operations is very limited and that such information was collected only after a considerable delay.

(5) In response to concerns regarding the health-care needs of Persian Gulf War veterans, particularly those who suffer from illnesses or conditions for which no diagnosis has been made, the Congress, in Public Law 102–585, directed the establishment of a Persian Gulf War Veterans Health Registry, authorized health examinations for veterans of the Persian Gulf War, and provided for the National Academy of Sciences to conduct a comprehensive review and assessment of information regarding the health consequences of military service in the Persian Gulf theater of operations and to develop recommendations on avenues for research regarding such health consequences. In Public Law 103–210, the Congress authorized

the Department of Veterans Affairs to provide health care services on a priority basis to Persian Gulf War veterans. The Congress also provided in Public Law 103–160 (the National Defense Authorization Act for Fiscal Year 1994) for the establishment of a specialized environmental medical facility for the conduct of research into the possible health effects of exposure to low levels of hazardous chemicals, especially among Persian Gulf veterans, and for research into the possible health effects of battlefield exposure in such veterans to depleted uranium.

(6) In response to concerns about the lack of objective research on Gulf War illnesses, Congress included research provisions in the National Defense Authorization Act for Fiscal Year 1995, which was passed by the House and Senate in September 1994. This legislation requires the Secretary of Defense to provide research grants to non-Federal researchers to support three types of studies of the Gulf War syndrome. The first type of study will be an epidemiological study or studies of the incidence, prevalence, and nature of the illness and symptoms and the risk factors associated with symptoms or illnesses. This will include illnesses among spouses and birth defects and illnesses among offspring born before and after the Gulf War. The second group of studies shall be conducted to determine the health consequences of the use of pyridostigmine bromide as a pretreatment antidote enhancer during the Persian Gulf War, alone or in combination with exposure to pesticides, environmental toxins, and other hazardous substances. The final group of studies shall include clinical research and other studies on the causes, possible transmission, and treatment of Gulf War syndrome, and will include studies of veterans and their spouses and children.

(7) Further research and studies must be undertaken to determine the underlying causes of the illnesses suffered by Persian Gulf War veterans and, pending the outcome of such research, veterans who are seriously ill as the result of such illnesses should be given the benefit of the doubt and be provided compensation benefits to offset the impairment in earnings capacities they may be experiencing.

SEC. 103. [38 U.S.C. 1117 note] PURPOSES.

The purposes of this title are—

(1) to provide compensation to Persian Gulf War veterans who suffer disabilities resulting from illnesses that cannot now be diagnosed or defined, and for which other causes cannot be identified;

(2) to require the Secretary of Veterans Affairs to develop at the earliest possible date case assessment strategies and definitions or diagnoses of such illnesses;

(3) to promote greater outreach to Persian Gulf War veterans and their families to inform them of ongoing research activities, as well as the services and benefits to which they are currently entitled; and

(4) to ensure that research activities and accompanying surveys of Persian Gulf War veterans are appropriately funded and undertaken by the Department of Veterans Affairs.

SEC. 104. [38 U.S.C. 1117 note] DEVELOPMENT OF MEDICAL EVALUATION PROTOCOL.

(a) UNIFORM MEDICAL EVALUATION PROTOCOL.—(1) The Secretary of Veterans Affairs shall develop and implement a uniform and comprehensive medical evaluation protocol that will ensure appropriate medical assessment, diagnosis, and treatment of Persian Gulf War veterans who are suffering from illnesses the origins of which are (as of the date of the enactment of this Act) unknown and that may be attributable to service in the Southwest Asia theater of operations during the Persian Gulf War. The protocol shall include an evaluation of complaints relating to illnesses involving the reproductive system.

(2) If such a protocol is not implemented before the end of the 120-day period beginning on the date of the enactment of this Act, the Secretary shall, before the end of such period, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report as to why such a protocol has not yet been developed.

(3)(A) The Secretary shall ensure that the evaluation under the protocol developed under this section is available at all Department medical centers that have the capability of providing the medical assessment, diagnosis, and treatment required under the protocol.

(B) The Secretary may enter into contracts with non-Department medical facilities for the provision of the evaluation under the protocol.

(C) In the case of a veteran whose residence is distant from a medical center described in subparagraph (A), the Secretary may provide the evaluation through a Department medical center described in that subparagraph and, in such a case, may provide the veteran the travel and incidental expenses therefor pursuant to the provisions of section 111 of title 38, United States Code.

(4)(A) If the Secretary is unable to diagnose the symptoms or illness of a veteran provided an evaluation, or if the symptoms or illness of a veteran do not respond to treatment provided by the Secretary, the Secretary may use the authority in section 1703 of title 38, United States Code, in order to provide for the veteran to receive diagnostic tests or treatment at a non-Department medical facility that may have the capability of diagnosing or treating the symptoms or illness of the veteran. The Secretary may provide the veteran the travel and incidental expenses therefor pursuant to the provisions of section 111 of title 38, United States Code.

(B) The Secretary shall request from each non-Department medical facility that examines or treats a veteran under this paragraph such information relating to the diagnosis or treatment as the Secretary considers appropriate.

(5) In each year after the implementation of the protocol, the Secretary shall enter into an agreement with the National Academy of Sciences under which agreement appropriate experts shall review the adequacy of the protocol and its implementation by the Department of Veterans Affairs.

(b) RELATIONSHIP TO OTHER COMPREHENSIVE CLINICAL EVALUATION PROTOCOLS.—The Secretary, in consultation with the Secretary of Defense, shall ensure that the information collected through the protocol described in this section is collected and main-

tained in a manner that permits the effective and efficient cross-reference of that information with information collected and maintained through the comprehensive clinical protocols of the Department of Defense for Persian Gulf War veterans.

(c) CASE DEFINITIONS AND DIAGNOSES.—The Secretary shall develop case definitions or diagnoses for illnesses associated with the service described in subsection (a)(1). The Secretary shall develop such definitions or diagnoses at the earliest possible date.

SEC. 105. [38 U.S.C. 1117 note] OUTREACH TO PERSIAN GULF VETERANS.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall implement a comprehensive outreach program to inform Persian Gulf War veterans and their families of the medical care and other benefits that may be provided by the Department of Veterans Affairs and the Department of Defense arising from service in the Persian Gulf War.

(b) NEWSLETTER.—(1) The outreach program shall include a newsletter which shall be updated and distributed at least semi-annually and shall be distributed to the veterans listed on the Persian Gulf War Veterans Health Registry. The newsletter shall include summaries of the status and findings of Government sponsored research on illnesses of Persian Gulf War veterans and their families, as well as on benefits available to such individuals through the Department of Veterans Affairs. The newsletter shall be prepared in consultation with veterans service organizations.

(2) The requirement under this subsection for the distribution of the newsletter shall terminate on December 31, 2003.

(c) TOLL-FREE NUMBER.—The outreach program shall include establishment of a toll-free telephone number to provide Persian Gulf War veterans and their families information on the Persian Gulf War Veterans Health Registry, health care and other benefits provided by the Department of Veterans Affairs, and such other information as the Secretary considers appropriate. Such toll-free telephone number shall be established not later than 90 days after the date of the enactment of this Act.

SEC. 106. COMPENSATION BENEFITS FOR DISABILITY RESULTING FROM ILLNESS ATTRIBUTED TO SERVICE DURING THE PERSIAN GULF WAR.

[Omitted—Amendments]

SEC. 107. [38 U.S.C. 1117 note] EVALUATION OF HEALTH STATUS OF SPOUSES AND CHILDREN OF PERSIAN GULF WAR VETERANS.

(a) EVALUATION PROGRAM.—Subject to subsection (c), the Secretary of Veterans Affairs shall conduct a program to evaluate the health status of spouses and children of Persian Gulf War veterans. Under the program, the Secretary shall provide for the conduct of diagnostic testing and appropriate medical examinations of any individual—

(1) who is the spouse or child of a veteran who—

(A) is listed in the Persian Gulf War Veterans Registry established under section 702 of Public Law 102–585; and

(B) is suffering from an illness or disorder;

(2) who is apparently suffering from, or may have suffered from, an illness or disorder (including a birth defect, mis-

carriage, or stillbirth) which cannot be disassociated from the veteran's service in the Southwest Asia theater of operations; and

(3) who, in the case of a spouse, has granted the Secretary permission to include in the Registry relevant medical data (including a medical history and the results of diagnostic testing and medical examinations) and such other information as the Secretary considers relevant and appropriate with respect to such individual.

(b) DURATION OF PROGRAM.—The program shall be carried out during the period beginning on November 1, 1994, and ending on September 30, 2003.

(c) FUNDING LIMITATION.—The amount spent for the program under subsection (a) may not exceed $2,000,000.

(d) CONTRACTING.—The Secretary may provide for the conduct of testing and examinations under subsection (a) through appropriate contract arrangements, including fee arrangements described in section 1703 of title 38, United States Code.

(e) STANDARD PROTOCOLS AND GUIDELINES.—The Secretary shall seek to ensure uniform development of medical data through the development of standard protocols and guidelines for such testing and examinations. If such protocols and guidelines have not been adopted before the end of the 120-day period beginning on the date of the enactment of this Act, the Secretary shall, before the end of such period, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report as to why such protocols and guidelines have not yet been developed.

(f) ENTRY OF RESULTS IN REGISTRY.—The results of diagnostic tests, medical histories, and medical examinations conducted under subsection (a) shall be entered into the Persian Gulf War Veterans Health Registry.

(g) OUTREACH.—The Secretary shall conduct such outreach activities as the Secretary determines necessary for the purposes of the program. In conducting such outreach activities, the Secretary shall advise that medical treatment is not available under the program.

(h) USE OUTSIDE DEPARTMENT OF STANDARD PROTOCOLS AND GUIDELINES.—The Secretary shall—

(1) make the standard protocols and guidelines developed under this section available to any entity which requests a copy of such protocols and guidelines; and

(2) enter into the registry the results of any examination of the spouse or child of a veteran who served in the Persian Gulf theater which a licensed physician certifies was conducted using those standard protocols and guidelines.

(i) REPORT TO CONGRESS.—Not later than July 31, 1999, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on activities with respect to the program, including the provision of services under subsection (d).

(j) DEFINITIONS.—For purposes of this section, the terms "child" and "spouse" have the meanings given those terms in paragraphs (4) and (31), respectively, of section 101 of title 38, United States Code.

SEC. 108. CLARIFICATION OF SCOPE OF HEALTH EXAMINATIONS PROVIDED FOR VETERANS ELIGIBLE FOR INCLUSION IN HEALTH-RELATED REGISTRIES.

[Omitted—Amendments]

SEC. 109. [38 U.S.C. 1117 note] SURVEY OF PERSIAN GULF VETERANS.

(a) IN GENERAL.—The Secretary of Veterans Affairs may carry out a survey of Persian Gulf veterans to gather information on the incidence and nature of health problems occurring in Persian Gulf veterans and their families.

(b) COORDINATION WITH DEPARTMENT OF DEFENSE.—Any survey under subsection (a) shall be carried out in coordination with the Secretary of Defense.

(c) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War as defined in section 101(33) of title 38, United States Code.

SEC. 110. [38 U.S.C. 1117 note] AUTHORIZATION FOR EPIDEMIOLOGICAL STUDIES.

(a) STUDY OF HEALTH CONSEQUENCES OF PERSIAN GULF SERVICE.—If the National Academy of Sciences includes in the report required by section 706(b) of the Veterans Health Care Act of 1992 (Public Law 102–585) a finding that there is a sound basis for an epidemiological study or studies on the health consequences of service in the Persian Gulf theater of operations during the Persian Gulf War and recommends the conduct of such a study or studies, the Secretary of Veterans Affairs is authorized to carry out such study.

(b) OVERSIGHT.—(1) The Secretary shall seek to enter into an agreement with the Medical Follow-Up Agency (MFUA) of the Institute of Medicine of the National Academy of Sciences for (A) the review of proposals to conduct the research referred to in subsection (a), (B) oversight of such research, and (C) review of the research findings.

(2) If the Secretary is unable to enter into an agreement under paragraph (1) with the entity specified in that paragraph, the Secretary shall enter into an agreement described in that paragraph with another appropriate scientific organization which does not have a connection to the Department of Veterans Affairs. In such a case, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives, at least 90 days before the date on which the agreement is entered into, notice in writing identifying the organization with which the Secretary intends to enter into the agreement.

(c) ACCESS TO DATA.—The Secretary shall enter into agreements with the Secretary of Defense and the Secretary of Health and Human Services to make available for the purposes of any study described in subsection (a) all data that the Secretary, in consultation with the National Academy of Sciences and the contractor for the study, considers relevant to the study.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Department such sums as are necessary for the conduct of studies described in subsection (a).

SEC. 111. COST-SAVINGS PROVISIONS.

[Omitted—Amendments]

---

c. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle C—Persian Gulf Illness

SEC. 721. [10 U.S.C. 1074 note] PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.

(a) OUTREACH PROGRAM TO PERSIAN GULF VETERANS AND FAMILIES.—The Secretary of Defense shall institute a comprehensive outreach program to inform members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf Conflict, and the families of such members, of illnesses that may result from such service. The program shall be carried out through both medical and command channels, as well as any other means the Secretary considers appropriate. Under the program, the Secretary shall—

(1) inform such individuals regarding—

(A) common disease symptoms reported by Persian Gulf veterans that may be due to service in the Southwest Asia theater of operations;

(B) blood donation policy;

(C) available counseling and medical care for such members; and

(D) possible health risks to children of Persian Gulf veterans;

(2) inform such individuals of the procedures for registering in either the Persian Gulf Veterans Health Surveillance System of the Department of Defense or the Persian Gulf War Health Registry of the Department of Veterans Affairs; and

(3) encourage such members to report any symptoms they may have and to register in the appropriate health surveillance registry.

(b) INCENTIVES TO PERSIAN GULF VETERANS TO REGISTER.—In order to encourage Persian Gulf veterans to register any symptoms they may have in one of the existing health registries, the Secretary of Defense shall provide the following:

(1) For any Persian Gulf veteran who is on active duty and who registers with the Department of Defense's Persian Gulf War Veterans Health Surveillance System, a full medical evaluation and any required medical care.

(2) For any Persian Gulf War veteran who is, as of the date of the enactment of this Act, a member of a reserve component, opportunity to register at a military medical facility in the Persian Gulf Veterans Health Care Surveillance System and, in the case of a Reserve who registers in that registry, a full medical evaluation by the Department of Defense. Depend-

ing on the results of the evaluation and on eligibility status, reserve personnel may be provided medical care by the Department of Defense.

(3) For a Persian Gulf veteran who is not, as of the date of the enactment of this Act, on active duty or a member of a reserve component, assistance and information at a military medical facility on registering with the Persian Gulf War Registry of the Department of Veterans Affairs and information related to support services provided by the Department of Veterans Affairs.

(c) COMPATIBILITY OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REGISTRIES.—The Secretary of Defense shall take appropriate actions to ensure—

(1) that the data collected by and the testing protocols of the Persian Gulf War Health Surveillance System maintained by the Department of Defense are compatible with the data collected by and the testing protocols of the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs; and

(2) that all information on individuals who register with the Department of Defense for purposes of the Persian Gulf War Health Surveillance System is provided to the Secretary of Veterans Affairs for incorporation into the Persian Gulf War Veterans Health Registry.

(d) PRESUMPTIONS ON BEHALF OF SERVICE MEMBER.—(1) A member of the Armed Forces who is a Persian Gulf veteran, who has symptoms of illness, and who the Secretary concerned finds may have become ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations.

(2) A member of the Armed Forces who is a Persian Gulf veteran and who reports being ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations until such time as the weight of medical evidence establishes other cause or causes of the member's illness.

(3) The Secretary concerned shall ensure that, for the purposes of health care treatment by the Department of Defense, health care and personnel administration, and disability evaluation by the Department of Defense, the symptoms of any member of the Armed Forces covered by paragraph (1) or (2) are examined in light of the member's service in the Persian Gulf War and in light of the reported symptoms of other Persian Gulf veterans. The Secretary shall ensure that, in providing health care diagnosis and treatment of the member, a broad range of potential causes of the member's symptoms are considered and that the member's symptoms are considered collectively, as well as by type of symptom or medical specialty, and that treatment across medical specialties is coordinated appropriately.

(4) The Secretary of Defense shall ensure that the presumptions of service connection and illness specified in paragraphs (1) and (2) are incorporated in appropriate service medical and per-

sonnel regulations and are widely disseminated throughout the Department of Defense.

(e) REVISION OF THE PHYSICAL EVALUATION BOARD CRITERIA.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall ensure that case definitions of Persian Gulf related illnesses, as well as the Physical Evaluation Board criteria used to set disability ratings for members no longer medically qualified for continuation on active duty, are established as soon as possible to permit accurate disability ratings related to a diagnosis of Persian Gulf illnesses.

(2) Until revised disability criteria can be implemented and members of the Armed Forces can be rated against those criteria, the Secretary of Defense shall ensure—

(A) that any member of the Armed Forces on active duty who may be suffering from a Persian Gulf-related illness is afforded continued military medical care; and

(B) that any member of the Armed Forces on active duty who is found by a Physical Evaluation Board to be unfit for continuation on active duty as a result of a Persian Gulf-related illness for which the board has no rating criteria (or inadequate rating criteria) for the illness or condition from which the member suffers is placed on the temporary disability retired list.

(f) REVIEW OF RECORDS AND RERATING OF PREVIOUSLY DISCHARGED GULF WAR VETERANS.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall ensure that a review is made of the health and personnel records of each Persian Gulf veteran who before the date of the enactment of this Act was discharged from active duty, or was medically retired, as a result of a Physical Evaluation Board process.

(2) The review under paragraph (1) shall be carried out to ensure that former Persian Gulf veterans who may have been suffering from a Persian Gulf-related illness at the time of discharge or retirement from active duty as a result of the Physical Evaluation Board process are reevaluated in accordance with the criteria established under subsection (e)(1) and, if appropriate, are rerated.

(g) PERSIAN GULF ILLNESS MEDICAL REFERRAL CENTERS.—The Secretary of Defense shall evaluate the feasibility of establishing one or more medical referral centers to provide uniform, coordinated medical care for Persian Gulf veterans on active duty who are or may be suffering from a Persian Gulf-related illness. The Secretary shall submit a report on such feasibility to the Committees on Armed Services of the Senate and House of Representatives not later than six months after the date of the enactment of this Act.

(h) ANNUAL REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on—

(A) efforts taken and results achieved in notifying members of the Armed Forces and their families as part of the outreach program required by subsection (a);

(B) efforts taken to revise the Physical Evaluation Board disability rating criteria and interim efforts to adjudicate cases before the revision of the criteria; and

(C) results of the review and rerating of previously separated servicemembers.

(2) The first report under paragraph (1) shall be submitted not later than 120 days after the date of the enactment of this Act.

(i) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf Conflict.

---

d. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 270. GRANT TO SUPPORT RESEARCH ON EXPOSURE TO HAZARDOUS AGENTS AND MATERIALS BY MILITARY PERSONNEL WHO SERVED IN THE PERSIAN GULF WAR.

(a) FINDINGS.—Congress makes the following findings:

(1) A number of veterans of the Persian Gulf War have reported unexplained illnesses and claim that such illnesses are a consequence of exposure to hazardous agents or materials as a result of service in Southwest Asia during the Persian Gulf War.

(2) Reports indicate that members of the Armed Forces who served in Southwest Asia during the Persian Gulf War may have been exposed to hazardous agents, including chemical warfare agents, biotoxins, and other substances during such service.

(3) It is in the interest of the United States that medical professionals providing care to members of the Armed Forces and to veterans understand the nature of the illnesses that such members and veterans may contract in order to ensure that such professionals have sufficient information to provide proper care to such members and veterans.

(b) GRANT TO SUPPORT ESTABLISHMENT OF RESEARCH FACILITY TO STUDY LOW-LEVEL CHEMICAL SENSITIVITIES.—The Secretary of Defense is authorized to make a grant in the amount of $1,200,000 to a medical research institution for the purpose of constructing and equipping a specialized environmental medical facility at that institution for the conduct of research into the possible health effect of exposure to low levels of hazardous chemicals, including chemical warfare agents and other substances and the individual susceptibility of humans to such exposure under environmentally controlled conditions, and for the conduct of such research, especially among persons who served on active duty in the Southwest

Asia theater of operations during the Persian Gulf War. The grant shall be made in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services. The institution to which the grant is to be made shall be selected through established acquisition procedures.

(c) FUNDING SOURCE.—Funds for the grant under subsection (b) shall be made from amounts appropriated to the Department of Defense for fiscal year 1994 for research, development, test, and evaluation.

(d) SELECTION CRITERIA.—To be eligible to be selected for a grant under subsection (b), an institution must meet each of the following requirements:

(1) Be affiliated with an accredited hospital and be affiliated with, and in close proximity to, a Department of Defense medical and a Department of Veterans Affairs medical center.

(2) Enter into an agreement with the Secretary of Defense to ensure that research personnel of those affiliated medical facilities and other relevant Federal personnel may have access to the facility to carry out research.

(3) Have demonstrated potential or ability to ensure the participation of scientific personnel with expertise in research on possible chemical sensitivities to low-level exposure to hazardous chemicals and other substances.

(4) Have immediate access to sophisticated physiological imaging (including functional brain imaging) and other innovative research technology that could better define the possible health effects of low-level exposure to hazardous chemicals and other substances and lead to new therapies.

(e) PARTICIPATION BY THE DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that each element of the Department of Defense provides to the medical research institution that is awarded the grant under subsection (b) any information possessed by that element on hazardous agents and materials to which members of the Armed Forces may have been exposed as a result of service in Southwest Asia during the Persian Gulf War and on the effects upon humans of such exposure. To the extent available, the information provided shall include unit designations, locations, and times for those instances in which such exposure is alleged to have occurred.

(f) REPORTS TO CONGRESS.—Not later than October 1, 1994, and annually thereafter for the period that research described in subsection (b) is being carried out at the facility constructed with the grant made under this section, the Secretary shall submit to the congressional defense committees a report on the results during the year preceding the report of the research and studies carried out under the grant.

SEC. 271. RESEARCH ON EXPOSURE TO DEPLETED URANIUM BY MILITARY PERSONNEL WHO SERVED IN THE PERSIAN GULF WAR.

(a) GRANT TO SUPPORT RESEARCH ON THE EFFECTS OF DEPLETED URANIUM.—From the funds appropriated or otherwise made available in fiscal year 1994 for research, development, test, and evaluation for the Department of Defense, the Secretary of Defense is authorized to make a competitive award of a grant in the

amount of $1,700,000 to a medical research institution for the purpose of studying the possible health effects of battlefield exposure to depleted uranium, including exposure through ingestion, inhalation, or bodily injury. The selection of the institution to which the grant is awarded shall be made in accordance with established defense acquisition procedures.

(b) RESEARCH PROGRAM.—The research to be conducted at the facility for which a grant is made under subsection (a) shall explore the possible short-term and long-term health effects of exposure to depleted uranium, including exposure through ingestion, inhalation, or bodily injury, and the individual susceptibility of service personnel to such exposure. Such research shall focus on (but not be limited to) persons who may have been exposed to depleted uranium while serving on active duty in the theater of operations during the Persian Gulf War. The specific objectives of the study shall include investigation of the pathology of depleted uranium fragments under controlled conditions, including—

(1) assessment of the toxico-kinetic properties of the various chemical forms of depleted uranium that could be inhaled, ingested, or imbedded;

(2) examination of whether there are depleted uranium cancer induction mechanisms similar to those observed in Thorotrast-specific liver cancers;

(3) determination of whether the radiogenic effects described in paragraphs (1) and (2) occur and, if so, at what fragment densities and latent periods;

(4) assessment of long-term, low-dose-rate irradiation of specific tissues, such as those of the nervous system;

(5) determination of the potential for chronic nephrotoxicity as a function of the organ exposed to depleted uranium; and

(6) conduct of pathological studies of tissue surrounding depleted uranium particles.

(c) REPORTS TO CONGRESS.—Not later than October 1, 1994, and annually thereafter for the period that research described in subsection (a) is being carried out under the grant made under this section, the Secretary shall submit to the congressional defense committees a report on the results of such research during the year preceding the report.

---

e. Persian Gulf War Veterans' Health Status Act

(Title VII of Public Law 102–585, approved Nov. 4, 1992)

TITLE VII—PERSIAN GULF WAR VETERANS' HEALTH STATUS

SEC. 701. [38 U.S.C. 527 note] SHORT TITLE.

This title may be cited as the "Persian Gulf War Veterans' Health Status Act".

SEC. 702. [38 U.S.C. 527 note] PERSIAN GULF WAR VETERANS HEALTH REGISTRY.

(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Veterans Affairs shall establish and maintain a special record to be known

as the "Persian Gulf War Veterans Health Registry" (in this section referred to as the "Registry").

(b) CONTENTS OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

(1) A list containing the name of each individual who served as a member of the Armed Forces in the Persian Gulf theater of operations during the Persian Gulf War and who—

(A) applies for care or services from the Department of Veterans Affairs under chapter 17 of title 38, United States Code;

(B) files a claim for compensation under chapter 11 of such title on the basis of any disability which may be associated with such service;

(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of such service;

(D) requests from the Department a health examination under section 703; or

(E) receives from the Department of Defense a health examination similar to the health examination referred to in subparagraph (D) and requests inclusion in the Registry.

(2) Relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual described in paragraph (1) who—

(A) grants to the Secretary permission to include such information in the Registry; or

(B) at the time the individual is listed in the Registry, is deceased.

(c) INDIVIDUALS SUBMITTING CLAIMS OR MAKING REQUESTS BEFORE DATE OF ENACTMENT.—If in the case of an individual described in subsection (b)(1) the application, claim, or request referred to in such subsection was submitted, filed, or made, before the date of the enactment of this Act, the Secretary shall, to the extent feasible, include in the Registry such individual's name and the data and information, if any, described in subsection (b)(2) relating to the individual.

(d) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Secretary of Veterans Affairs such information maintained by the Department of Defense as the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

(e) RELATION TO DEPARTMENT OF DEFENSE REGISTRY.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall ensure that information is collected and maintained in the Registry in a manner that permits effective and efficient cross-reference between the Registry and the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 704.

(f) ONGOING OUTREACH TO INDIVIDUALS LISTED IN REGISTRY.—The Secretary of Veterans Affairs shall, from time to time, notify

individuals listed in the Registry of significant developments in research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

SEC. 703. [38 U.S.C. 527 note] HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs—

(A) shall, upon the request of a veteran described in subsection (b)(1), provide the veteran with a health examination (including any appropriate diagnostic tests) and consultation and counseling with respect to the results of the examination and the tests; and

(B) may, upon the request of a veteran described in subsection (b)(2), provide the veteran with such an examination (including diagnostic tests) and such consultation and counseling.

(2) The Secretary shall carry out appropriate outreach activities with respect to the provision of any health examinations (including any diagnostic tests) and consultation and counseling services under paragraph (1).

(b) COVERED VETERANS.—(1) In accordance with subsection (a)(1)(A), the Secretary shall provide an examination (including diagnostic tests), consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in the Persian Gulf War Veterans Health Registry established by section 702.

(2) In accordance with subsection (a)(1)(B), the Secretary may provide an examination (including diagnostic tests), consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in any other similar health-related registry administered by the Secretary.

* * * * * * *

SEC. 706. [38 U.S.C. 527 note] AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR.

(a) AGREEMENT.—(1) The Secretary of Veterans Affairs and Secretary of Defense jointly shall seek to enter into an agreement with the National Academy of Sciences for the Medical Follow-Up Agency (MFUA) of the Institute of Medicine of the Academy to review existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(2) The agreement shall require MFUA to provide members of veterans organizations and members of the scientific community (including the Director of the Office of Technology Assessment) with the opportunity to comment on the method or methods MFUA proposes to use in conducting the review.

(3) The agreement shall permit MFUA, in conducting the review, to examine and evaluate medical records of individuals who are included in the registries referred to in section 705(d) for purposes that MFUA considers appropriate, including the purpose of identifying illnesses of those individuals.

(4) The Secretary of Veterans Affairs and the Secretary of Defense shall seek to enter into the agreement under this section not later than 180 days after the date of the enactment of this Act.

(b) REPORT.—(1) The agreement under this section shall require the National Academy of Sciences to submit to the committees and secretaries referred to in paragraph (2) a report on the results of the review carried out under the agreement. Such report shall contain the following:

(A) An assessment of the effectiveness of actions taken by the Secretary of Veterans Affairs and the Secretary of Defense to collect and maintain information that is potentially useful for assessing the health consequences of the military service referred to in subsection (a).

(B) Recommendations on means of improving the collection and maintenance of such information.

(C) Recommendations on whether there is sound scientific basis for an epidemiological study or studies on the health consequences of such service, and if the recommendation is that there is sound scientific basis for such a study or studies, the nature of the study or studies.

(2) The committees and secretaries referred to in paragraph (1) are the following:

(A) The Committees on Veterans' Affairs of the Senate and House of Representatives.

(B) The Committees on Armed Services of the Senate and House of Representatives.

(C) The Secretary of Veterans Affairs.

(D) The Secretary of Defense.

(c) FUNDING.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall make available up to a total of $500,000 in fiscal year 1993, from funds available to the Department of Veterans Affairs and the Department of Defense in that fiscal year, to carry out the review. Any amounts provided by the two departments shall be provided in equal amounts.

(2) If the Secretary of Veterans Affairs and the Secretary of Defense enter into an agreement under subsection (a) with the National Academy of Sciences—

(A) the Secretary of Veterans Affairs shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Veterans Affairs in each such fiscal year, to the National Academy of Sciences for the general purposes of conducting epidemiological research with respect to military and veterans populations; and

(B) the Secretary of Defense shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Defense in each such fiscal year, to the National Academy of Sciences for the purposes of carrying out the research referred to in subparagraph (A).

(d) RESEARCH REVIEW AND DEVELOPMENT OF MEDICAL EDUCATION CURRICULUM.—(1) In order to further understand the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War and of new research findings with implications for improving the provision of care for veterans of such service, the Secretary of Veterans Affairs and the

Secretary of Defense shall seek to enter into an agreement with the National Academy of Sciences under which the Institute of Medicine of the Academy would—

(A) develop a curriculum pertaining to the care and treatment of veterans of such service who have ill-defined or undiagnosed illnesses for use in the continuing medical education of both general and specialty physicians who provide care for such veterans; and

(B) on an ongoing basis, periodically review and provide recommendations regarding the research plans and research strategies of the Departments relating to the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(2) Recommendations to be provided under paragraph (1)(B) include any recommendations that the Academy considers appropriate for additional scientific studies (including studies related to treatment models) to resolve areas of continuing scientific uncertainty relating to the health consequences of any aspects of such military service. In making recommendations for additional studies, the Academy shall consider the available scientific data, the value and relevance of the information that could result from such studies, and the cost and feasibility of carrying out such studies.

(3) Not later than 9 months after the Institute of Medicine provides the Secretaries the curriculum developed under paragraph (1)(A), the Secretaries shall provide for the conduct of continuing education programs using that curriculum. Those programs shall include instruction which seeks to emphasize use of appropriate protocols of diagnosis, referral, and treatment of such veterans.

SEC. 707. [38 U.S.C. 527 note] COORDINATION OF HEALTH-RELATED GOVERNMENT ACTIVITIES ON THE PERSIAN GULF WAR.

(a) DESIGNATION OF COORDINATING ORGANIZATION.—The President shall designate, and may redesignate from time to time, the head of an appropriate department or agency of the Federal Government to coordinate all activities undertaken or funded by the Executive Branch of the Federal Government on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(b) PUBLIC ADVISORY COMMITTEE.—Not later than January 1, 1999, the head of the department or agency designated under subsection (a) shall establish an advisory committee consisting of members of the general public, including Persian Gulf War veterans and representatives of such veterans, to provide advice to the head of that department or agency on proposed research studies, research plans, or research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War. The department or agency head shall consult with such advisory committee on a regular basis.

(c) REPORTS.—(1) Not later than March 1 of each year, the head of the department or agency designated under subsection (a) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on—

(A) the status and results of all such research activities undertaken by the executive branch during the previous year; and

(B) research priorities identified during that year.

(2)(A) Not later than 120 days after submission of the epidemiological research study conducted by the Department of Veterans Affairs entitled "VA National Survey of Persian Gulf Veterans—Phase III", the head of the department or agency designated under subsection (a) shall submit to the congressional committees specified in paragraph (1) a report on the findings under that study and any other pertinent medical literature.

(B) With respect to any findings of that study and any other pertinent medical literature which identify scientific evidence of a greater relative risk of illness or illnesses in family members of veterans who served in the Persian Gulf War theater of operations than in family members of veterans who did not so serve, the head of the department or agency designated under subsection (a) shall seek to ensure that appropriate research studies are designed to follow up on such findings.

(d) PUBLIC AVAILABILITY OF RESEARCH FINDINGS.—The head of the department or agency designated under subsection (a) shall ensure that the findings of all research conducted by or for the executive branch relating to the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War (including information pertinent to improving provision of care for veterans of such service) are made available to the public through peer-reviewed medical journals, the World Wide Web, and other appropriate media.

(e) OUTREACH.—The head of the department or agency designated under subsection (a) shall ensure that the appropriate departments consult and coordinate in carrying out an ongoing program to provide information to those who served in the Southwest Asia theater of operations during the Persian Gulf War relating to: (1) the health risks, if any, resulting from any risk factors associated with such service; and (2) any services or benefits available with respect to such health risks.

SEC. 708. [38 U.S.C. 527 note] DEFINITION.

For the purposes of this title, the term "Persian Gulf War" has the meaning given such term in section 101(33) of title 38, United States Code.

---

f. National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

PART C—MISCELLANEOUS

* * * * * * *

SEC. 734. [10 U.S.C. 1074 note] REGISTRY OF MEMBERS OF THE ARMED FORCES EXPOSED TO FUMES OF BURNING OIL IN CONNECTION WITH OPERATION DESERT STORM.

(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section re-

ferred to as the "Registry") relating to the following members of the Armed Forces:

(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

(c) REPORTING REQUIREMENT RELATING TO EXPOSURE STUDIES.—The Secretary shall submit to Congress each year, at or about the time that the President's budget is submitted that year under section 1105 of title 31, United States Code, a report regarding—

(1) the results of all on-going studies on the members referred to in subsection (a)(1) to determine the health consequences (including any short- or long-term consequences) of the exposure of such members to the fumes of burning oil; and

(2) the need for additional studies relating to the exposure of such members to such fumes.

(d) MEDICAL EXAMINATION.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

(e) EFFECTIVE DATE.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "Operation Desert Storm" has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

(2) The term "Persian Gulf conflict" has the meaning given such term in section 3(3) of such Act.

3. HEALTH CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

a. Sections 8111 and 8111A of title 38, United States Code

§ 8111. Sharing of Department and Department of Defense health-care resources

(a) The Secretary and the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy may enter into agreements and contracts for the mutual use or exchange of use of hospital and domiciliary facilities, and such supplies, equipment, material, and other resources as may be needed to operate such facilities properly, except that the Secretary may not enter into an agreement that would result (1) in a permanent reduction in the total number of authorized Department hospital beds and nursing home beds to a level below the minimum number of such beds required by section 8110(a)(1) of this title to be authorized, or (2) in a permanent reduction in the total number of such beds operated and maintained to a level below the minimum number of such beds required by such section to be operated and maintained or in any way subordinate or transfer the operation of the Department to any other agency of the Government.

(b)(1) In order to promote the sharing of health-care resources between the Department and the Department of Defense (hereinafter in this section referred to as the "agencies"), there is established an interagency committee to be known as the Department/Department of Defense Health-Care Resources Sharing Committee (hereinafter in this subsection referred to as the "Committee").

(2) The Committee shall be composed of—

(A) the Under Secretary for Health and such other officers and employees of the Department as the Under Secretary for Health may designate; and

(B) the Assistant Secretary of Defense for Health Affairs (hereinafter in this section referred to as the "Assistant Secretary") and such other officers and employees of the Department of Defense as the Assistant Secretary may designate,

except that the size of the Committee shall be mutually determined by the Under Secretary for Health and the Assistant Secretary. During odd-numbered fiscal years, the Under Secretary for Health shall be the chairman of the Committee. During even-numbered fiscal years, the Assistant Secretary shall be the chairman of the Committee. The agencies shall provide administrative support services for the Committee at a level sufficient for the efficient oper-

ation of the Committee and shall share the responsibility for the provision of such services on an equitable basis.

(3) In order to enable the Committee to make recommendations under paragraph (4) of this subsection, the Committee shall on a continuing basis—

(A) review existing policies, procedures, and practices relating to the sharing of health-care resources between the agencies;

(B) identify and assess further opportunities for the sharing of health-care resources between the agencies that would not, in the judgment of the Committee, adversely affect the range of services, the quality of care, or the established priorities for care provided by either agency;

(C) identify changes in policies, procedures, and practices that would, in the judgment of the Committee, promote such sharing of health-care resources between the agencies;

(D) monitor plans of the agencies for the acquisition of additional health-care resources, including the location of new facilities and the acquisition of major equipment, in order to assess the potential impact of such plans on further opportunities for such sharing of health-care resources; and

(E) monitor the implementation of activities designed to promote the sharing of health-care resources between the agencies.

(4) At such times as the Committee considers appropriate, the Committee shall make recommendations to the Secretary or the Secretary of Defense, or both, with respect to (A) changes in policies, procedures, and practices that the Committee has identified under paragraph (3)(C) of this subsection pertaining to the sharing of health-care resources described in such paragraph, and (B) such other matters as the Committee considers appropriate in order to promote such sharing of health-care resources.

(c)(1) After considering the recommendations made under subsection (b)(4) of this section, the Secretary and the Secretary of Defense shall jointly establish guidelines to promote the sharing of health-care resources between the agencies. Guidelines established under this subsection shall provide for such sharing consistent with the health-care responsibilities of the Department under this title and with the health-care responsibilities of the Department of Defense under chapter 55 of title 10 and so as not to adversely affect the range of services, the quality of care, or the established priorities for care provided by either agency.

(2) Guidelines established under paragraph (1) of this subsection shall authorize the heads of individual medical facilities of the agencies to enter into health-care resources sharing agreements in accordance with subsection (d) of this section and shall include guidelines for such agreements.

(d)(1) The head of each medical facility of either agency is authorized to enter into sharing agreements with the heads of medical facilities of the other agency in accordance with guidelines established under subsection (c) of this section. Under any such agreement, an individual who is a primary beneficiary of one agency may be provided health care at a facility of the other agency that is a party to the sharing agreement.

(2) Each such agreement shall identify the health-care resources to be shared.

(3) Each such agreement shall provide, and shall specify procedures designed to ensure, that the availability of direct health care to individuals who are not primary beneficiaries of the providing agency (A) is on a referral basis from the facility of the other agency, and (B) does not (as determined by the head of the facility of the providing agency) adversely affect the range of services, the quality of care, or the established priorities for care provided to the primary beneficiaries of the providing agency.

(4) Each such agreement shall provide that a providing agency shall be reimbursed for the cost of the health-care resources provided under the agreement and that the rate for such reimbursement shall be determined in accordance with the methodology agreed to pursuant to subsection (e) of this section.

(5) Each proposal for an agreement under paragraph (1) of this subsection shall be submitted to the Under Secretary for Health and the Assistant Secretary and shall be effective as an agreement in accordance with its terms (A) on the forty-sixth day after the receipt of such proposal by both such officials, unless earlier disapproved by either such official, or (B) if earlier approved by both such officials, on the date of such approval.

(e) Reimbursement under any sharing agreement entered into under subsection (d) of this section shall be based upon a methodology that is agreed upon by the Under Secretary for Health and the Assistant Secretary and that provides appropriate flexibility to the heads of the facilities concerned to take into account local conditions and needs and the actual costs to the providing agency's facility of the health-care resources provided. Any funds received through such a reimbursement shall be credited to funds that have been allotted to the facility that provided the care or services.

(f) At the time the President's Budget is transmitted to Congress in any year pursuant to section 1105 of title 31, the Secretary and the Secretary of Defense shall submit a joint report to Congress on the implementation of this section during the fiscal year that ended during the previous calendar year. Each such report shall include—

(1) the guidelines prescribed under subsection (c) of this section (and any revision of such guidelines);

(2) the assessment of further opportunities identified under clause (B) of subsection (b)(3) of this section for sharing of health-care resources between the agencies;

(3) any recommendation made under subsection (b)(4) of this section during such fiscal year;

(4) a review of the sharing agreements entered into under subsection (d) of this section and a summary of activities under such agreements during such fiscal year;

(5) a summary of other planning and activities involving either agency in connection with promoting the coordination and sharing of Federal health-care resources during the preceding fiscal year; and

(6) such recommendations for legislation as the Secretary and the Secretary of Defense consider appropriate to facilitate the sharing of health-care resources between the agencies.

(g) For the purposes of this section:

(1) The term "beneficiary" means a person who is a primary beneficiary of the Department or of the Department of Defense.

(2) The term "direct health care" means health care provided to a beneficiary in a medical facility operated by the Department or the Department of Defense.

(3) The term "head of a medical facility" (A) with respect to a medical facility of the Department, means the director of the facility, and (B) with respect to a medical facility of the Department of Defense, means the medical or dental officer in charge or the contract surgeon in charge.

(4) The term "health-care resource" includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource.

(5) The term "primary beneficiary" (A) with respect to the Department means a person who is eligible under this title (other than under section 1711(b) or 1713 or subsection (d) of this section) or any other provision of law for care or services in Department medical facilities, and (B) with respect to the Department of Defense, means a member or former member of the Armed Forces who is eligible for care under section 1074 of title 10.

(6) The term "providing agency" means the Department, in the case of care or services furnished by a facility of the Department, and the Department of Defense, in the case of care or services furnished by a facility of the Department of Defense.

§ 8111A. Furnishing of health-care services to members of the Armed Forces during a war or national emergency

(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

(2) For the purposes of this section, the terms "hospital care", "nursing home care", and "medical services" have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively.

(b)(1) During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under subsection (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements under subsection (c) of this section, may enter into contracts with private facilities for the provision during

such period by such facilities of hospital care and medical services described in paragraph (2) of this subsection.

(2) Hospital care and medical services referred to in paragraph (1) of this subsection are—

(A) hospital care and medical services authorized under this title for a veteran and necessary for the care or treatment of a condition for which the veteran is receiving medical services at a Department facility under subsection (f) of section 1712 of this title, in a case in which the delay involved in furnishing such care or services at such Department facility or at any other Department facility reasonably accessible to the veteran would, in the judgment of the Under Secretary for Health, be likely to result in a deterioration of such condition; and

(B) hospital care for a veteran who—

(i) is receiving hospital care under section 1710 of this title; or

(ii) is eligible for hospital care under such section and requires such care in a medical emergency that poses a serious threat to the life or health of the veteran;

if Department facilities are not capable of furnishing or continuing to furnish the care required because of the furnishing of care and services to members of the Armed Forces under subsection (a) of this section.

(c)(1) The cost of any care or services provided by the Department under subsection (a) of this section shall be reimbursed to the Department by the Department of Defense at such rates as may be agreed upon by the Secretary and the Secretary of Defense based on the cost of the care or services provided.

(2) Amounts received under this subsection shall be credited to funds allotted to the Department facility that provided the care or services.

(d)(1) The Secretary and the Secretary of Defense shall jointly review plans for the implementation of this section not less often than annually.

(2) Whenever a modification to such plans is agreed to, the Secretaries shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on such modification. Any such report shall be submitted within 30 days after modification is agreed to.

(e) The Secretary shall prescribe regulations to govern any exercise of the authority of the Secretary under subsections (a) and (b) of this section and of the Under Secretary for Health under subsection (b)(2)(A) of this section.

(f) Within thirty days after a declaration of a period of war or national emergency described in subsection (a) of this section (or as soon after the end of such thirty-day period as is reasonably practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's allocation of facilities and personnel in order to provide priority hospital care, nursing home care, and medical services under this section to members of the Armed Forces. Thereafter, with respect to any fiscal year in which the authority in subsection (b) of this section to enter into contracts with private facilities has been used, the Secretary shall report within ninety days after the

end of such fiscal year to those committees regarding the extent of, and the circumstances under which, such authority was used.

---

b. Title II of the Veterans Health Care Act of 1992

(Public Law 102–585, approved Nov. 4, 1992)

TITLE II—HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

SEC. 201. [38 U.S.C. 8111 note] TEMPORARY EXPANSION OF AUTHORITY FOR SHARING AGREEMENTS.

(a) AUTHORITY.—The Secretary of Veterans Affairs may enter into an agreement with the Secretary of Defense under this section to expand the availability of health-care sharing arrangements with the Department of Defense under section 8111(c) of title 38, United States Code. Under such an agreement—

(1) the head of a Department of Veterans Affairs medical facility may enter into agreements under section 8111(d) of that title with (A) the head of a Department of Defense medical facility, (B) with any other official of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility, or (C) with a contractor of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility; and

(2) the term "primary beneficiary" shall be treated as including—

(A) with respect to the Department of Veterans Affairs, any person who is described in section 1713 of title 38, United States Code; and

(B) with respect to the Department of Defense, any person who is a covered beneficiary under chapter 55 of title 10, United States Code.

(b) USE OF FUNDS.—Any amount received by the Secretary from a non-Federal entity as payment for services provided by the Secretary during a prior fiscal year under an agreement entered into under this section may be obligated by the Secretary during the fiscal year in which the Secretary receives the payment.

SEC. 202. [38 U.S.C. 8111 note] REQUIREMENT FOR IMPROVEMENT IN SERVICES FOR VETERANS.

A proposed agreement authorized by section 201 that is entered into by the head of a Department of Veterans Affairs medical facility may take effect only if the Under Secretary for Health of the Department of Veterans Affairs finds, and certifies to the Secretary of Veterans Affairs, that implementation of the agreement—

(1) will result in the improvement of services to eligible veterans at that facility; and

(2) will not result in the denial of, or a delay in providing, access to care for any veteran at that facility.

SEC. 203. [38 U.S.C. 8111 note] EXPANDED SHARING AGREEMENTS WITH DEPARTMENT OF DEFENSE.

Under an agreement under section 201, guidelines under section 8111(b) of title 38, United States Code, may be modified to provide that, notwithstanding any other provision of law, any person who is a covered beneficiary under chapter 55 of title 10 and who is furnished care or services by a facility of the Department of Veterans Affairs under an agreement entered into under section 8111 of that title, or who is described in section 1713 of title 38, United States Code, and who is furnished care or services by a facility of the Department of Defense, may be authorized to receive such care or services—

(1) without regard to any otherwise applicable requirement for the payment of a copayment or deductible; or

(2) subject to a requirement to pay only part of any such otherwise applicable copayment or deductible, as specified in the guidelines.

SEC. 204. [38 U.S.C. 8111 note] EXPIRATION OF AUTHORITY.

[Repealed by section 302(b) of the Veterans' Health Care Eligibility Reform Act of 1996 (Public Law 104–262).]

SEC. 205. [38 U.S.C. 8111 note] CONSULTATION WITH VETERANS SERVICE ORGANIZATIONS.

In carrying out this title, the Secretary of Veterans Affairs shall consult with organizations named in or approved under section 5902 of title 38, United States Code.

SEC. 206. [38 U.S.C. 8111 note] ANNUAL REPORT.

[Omitted-Obsolete]

(a) IN GENERAL.—For each of fiscal years 1993 through 1996, the Secretary of Defense and the Secretary of Veterans Affairs shall include in the annual report of the Secretaries under section 8111(f) of title 38, United States Code, a description of the Secretaries' implementation of this section.

(b) ADDITIONAL MATTERS FOR FISCAL YEAR 1996 REPORT.—In the report under subsection (a) for fiscal year 1996, the Secretaries shall include the following:

(1) An assessment of the effect of agreements entered into under section 201 on the delivery of health care to eligible veterans.

(2) An assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the Armed Forces, dependents of members or former members of a uniformed service, and beneficiaries under section 1713 of title 38, United States Code.

(3) Any plans for administrative action, and any recommendations for legislation, that the Secretaries consider appropriate to include in the report.

SEC. 207. [38 U.S.C. 8111 note] AUTHORITY TO BILL HEALTH-PLAN CONTRACTS.

(a) RIGHT TO RECOVER.—In the case of a primary beneficiary (as described in section 201(a)(2)(B)) who has coverage under a

health-plan contract, as defined in section 1729(i)(1)(A) of title 38, United States Code, and who is furnished care or services by a Department medical facility pursuant to this title, the United States shall have the right to recover or collect charges for such care or services from such health-plan contract to the extent that the beneficiary (or the provider of the care or services) would be eligible to receive payment for such care or services from such health-plan contract if the care or services had not been furnished by a department or agency of the United States. Any funds received from such health-plan contract shall be credited to funds that have been allotted to the facility that furnished the care or services.

(b) ENFORCEMENT.—The right of the United States to recover under such a beneficiary's health-plan contract shall be enforceable in the same manner as that provided by subsections (a)(3), (b), (c)(1), (d), (f), (h), and (i) of section 1729 of title 38, United States Code.

---

c. Interdepartmental Cooperation in the Delivery of Medical Care

Section 745 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 745. [10 U.S.C. 1071 note] JOINT DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REPORTS RELATING TO INTERDEPARTMENTAL COOPERATION IN THE DELIVERY OF MEDICAL CARE.

(a) FINDINGS.—Congress makes the following findings:

(1) The military health care system of the Department of Defense and the Veterans Health Administration of the Department of Veterans Affairs are national institutions that collectively manage more than 1,500 hospitals, clinics, and health care facilities worldwide to provide services to more than 11,000,000 beneficiaries.

(2) In the post-Cold War era, these institutions are in a profound transition that involves challenging opportunities.

(3) During the period from 1988 to 1998, the number of military medical personnel has declined by 15 percent and the number of military hospitals has been reduced by one-third.

(4) During the 2 years since 1996, the Department of Veterans Affairs has revitalized its structure by decentralizing authority into 22 Veterans Integrated Service Networks.

(5) In the face of increasing costs of medical care, increased demands for health care services, and increasing budgetary constraints, the Department of Defense and the Department of Veterans Affairs have embarked on a variety of dynamic and innovative cooperative programs ranging from shared services to joint venture operations of medical facilities.

(6) In 1984, there was a combined total of 102 Department of Veterans Affairs and Department of Defense facilities with sharing agreements. By 1997, that number had grown to 420. During the six years from fiscal year 1992 through fiscal year 1997, shared services increased from slightly over 3,000 serv-

ices to more than 6,000 services, ranging from major medical and surgical services, laundry, blood, and laboratory services to unusual speciality care services.

(7) The Department of Defense and the Department of Veterans Affairs are conducting four health care joint ventures in New Mexico, Nevada, Texas, and Oklahoma, and are planning to conduct four more such ventures in Alaska, Florida, Hawaii, and California.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Department of Defense and the Department of Veterans Affairs should be commended for the cooperation between the two departments in the delivery of medical care, of which the cooperation involved in the establishment and operation of the Department of Defense and the Department of Veterans Affairs Executive Council is a praiseworthy example;

(2) the Department of Defense and the Department of Veterans Affairs are encouraged to continue to explore new opportunities to enhance the availability and delivery of medical care to beneficiaries by further enhancing the cooperative efforts of the departments; and

(3) enhanced cooperation between the Department of Defense and the Department of Veterans Affairs is encouraged regarding—

(A) the general areas of access to quality medical care, identification and elimination of impediments to enhanced cooperation, and joint research and program development; and

(B) the specific areas in which there is significant potential to achieve progress in cooperation in a short term, including computerization of patient records systems, participation of the Department of Veterans Affairs in the TRICARE program, pharmaceutical programs, and joint physical examinations.

(c) JOINT SURVEY OF POPULATIONS SERVED.—(1) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly conduct a survey of their respective medical care beneficiary populations to identify, by category of beneficiary (defined as the Secretaries consider appropriate), the expectations of, requirements for, and behavior patterns of the beneficiaries with respect to medical care. The two Secretaries shall develop the protocol for the survey jointly, but shall obtain the services of an entity independent of the Department of Defense and the Department of Veterans Affairs to carry out the survey.

(2) The survey shall include the following:

(A) Demographic characteristics, economic characteristics, and geographic location of beneficiary populations with regard to catchment or service areas.

(B) The types and frequency of care required by veterans, retirees, and dependents within catchment or service areas of Department of Defense and Department of Veterans Affairs medical facilities and outside those areas.

(C) The numbers of, characteristics of, and types of medical care needed by the veterans, retirees, and dependents who, though eligible for medical care in Department of Defense or

Department of Veterans Affairs treatment facilities or through other federally funded medical programs, choose not to seek medical care from those facilities or under those programs, and the reasons for that choice.

(D) The obstacles or disincentives for seeking medical care from such facilities or under such programs that are perceived by veterans, retirees, and dependents.

(E) Any other matters that the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate for the survey.

(3) The Secretary of Defense or the Secretary of Veterans Affairs may waive the survey requirements under this subsection with respect to information that can be better obtained from a source other than the survey.

(4) The Secretary of Defense and the Secretary of Veterans Affairs shall submit a report on the results of the survey to the appropriate committees of Congress. The report shall contain the matters described in paragraph (2) and any proposals for legislation that the Secretaries recommend for enhancing Department of Defense and Department of Veterans Affairs cooperative efforts with respect to the delivery of medical care.

(d) REVIEW OF LAW AND POLICIES.—(1) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly conduct a review to identify impediments to cooperation between the Department of Defense and the Department of Veterans Affairs regarding the delivery of medical care. The matters reviewed shall include the following:

(A) All laws, policies, and regulations, and any attitudes of beneficiaries of the health care systems of the two departments, that have the effect of preventing the establishment, or limiting the effectiveness, of cooperative health care programs of the departments.

(B) The requirements and practices involved in the credentialling and licensure of health care providers.

(C) The perceptions of beneficiaries in a variety of categories (defined as the Secretaries consider appropriate) regarding the various Federal health care systems available for their use.

(D) The types and frequency of medical services furnished by the Department of Defense and the Department of Veterans Affairs through cooperative arrangements to each category of beneficiary (including active-duty members, retirees, dependents, veterans in the health-care eligibility categories referred to as Category A and Category C, and persons authorized to receive medical care under section 1713 of title 38, United States Code) of the other department.

(E) The extent to which health care facilities of the Department of Defense and Department of Veterans Affairs have sufficient capacity, or could jointly or individually create sufficient capacity, to provide services to beneficiaries of the other department without diminution of access or services to their primary beneficiaries.

(F) The extent to which the recruitment of scarce medical specialists and allied health personnel by the Department of

Defense and the Department of Veterans Affairs could be enhanced through cooperative arrangements for providing health care services.

(G) The obstacles and disincentives to providing health care services through cooperative arrangements between the Department of Defense and the Department of Veterans Affairs.

(2) The Secretaries shall jointly submit a report on the results of the review to the appropriate committees of Congress. The report shall include any proposals for legislation that the Secretaries recommend for eliminating or reducing impediments to interdepartmental cooperation that are identified during the review.

(e) PARTICIPATION IN TRICARE.—(1) The Secretary of Defense shall review the TRICARE program to identify opportunities for increased participation by the Department of Veterans Affairs in that program. The ongoing collaboration between Department of Defense officials and Department of Veterans Affairs officials regarding increased participation shall be included among the matters reviewed.

(2) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a semiannual report on the status of the review under this subsection and on efforts to increase the participation of the Department of Veterans Affairs in the TRICARE program. No report is required under this paragraph after the submission of a semiannual report in which the Secretaries declare that the Department of Veterans Affairs is participating in the TRICARE program to the extent that can reasonably be expected to be attained.

(f) PHARMACEUTICAL BENEFITS AND PROGRAMS.—(1) The Department of Defense-Department of Veterans Affairs Federal Pharmacy Executive Steering Committee shall—

(A) undertake a comprehensive examination of existing pharmaceutical benefits and programs for beneficiaries of Department of Defense medical care programs, including matters relating to the purchasing, distribution, and dispensing of pharmaceuticals and the management of mail order pharmaceuticals programs; and

(B) review the existing methods for contracting for and distributing medical supplies and services.

(2) The committee shall submit a report on the results of the examination to the appropriate committees of Congress.

(g) STANDARDIZATION OF PHYSICAL EXAMINATIONS FOR DISABILITY.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the status of the efforts of the Department of Defense and the Department of Veterans Affairs to standardize physical examinations administered by the two departments for the purpose of determining or rating disabilities.

(h) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—For the purposes of this section, the appropriate committees of Congress are as follows:

(1) The Committee on Armed Services and the Committee on Veterans' Affairs of the Senate.

(2) The Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

(i) DEADLINES FOR SUBMISSION OF REPORTS.—(1) The report required by subsection (c)(3) shall be submitted not later than January 1, 2000.

(2) The report required by subsection (d)(2) shall be submitted not later than March 1, 1999.

(3) The semiannual report required by subsection (e)(2) shall be submitted not later than March 1 and September 1 of each year.

(4) The report on the examination required under subsection (f) shall be submitted not later than 60 days after the completion of the examination.

(5) The report required by subsection (g) shall be submitted not later than March 1, 1999.

---

d. Joint Telemedicine and Telepharmacy Demonstration Projects

Section 724 of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

SEC. 724. [10 U.S.C. 1092 note] JOINT TELEMEDICINE AND TELEPHARMACY DEMONSTRATION PROJECTS BY THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs may carry out joint demonstration projects for purposes of evaluating the feasibility and practicability of using telecommunications to provide health care services and pharmacy services.

(b) SERVICES TO BE PROVIDED.—The services provided under the demonstration projects may include the following:

(1) Radiology and imaging services.

(2) Diagnostic services.

(3) Referral services.

(4) Clinical pharmacy services.

(5) Any other health care services or pharmacy services designated by the Secretaries.

(c) SELECTION OF LOCATIONS.—(1) The Secretaries may carry out the demonstration projects described in subsection (a) at not more than five locations selected by the Secretaries from locations in which are located both a uniformed services treatment facility and a Department of Veterans Affairs medical center that are affiliated with academic institutions having a demonstrated expertise in the provision of health care services or pharmacy services by means of telecommunications.

(2) Representatives of a facility and medical center selected under paragraph (1) shall, to the maximum extent practicable, carry out the demonstration project in consultation with representatives of the academic institution or institutions with which affiliated.

(d) PERIOD OF DEMONSTRATION PROJECTS.—The Secretaries may carry out the demonstration projects during the three-year period beginning on October 1, 1999.

(e) REPORT.—Not later than December 31, 2002, the Secretaries shall jointly submit to Congress a report on the demonstration projects. The report shall include—

(1) a description of each demonstration project; and

(2) an evaluation, based on the demonstration projects, of the feasibility and practicability of using telecommunications to provide health care services and pharmacy services, including the provision of such services to field hospitals of the Armed Forces and to Department of Veterans Affairs outpatient health care clinics.

---

e. Access to Care for TRICARE-Eligible Military Retirees

Section 113 of the Veterans Millennium Health Care and Benefits Act

(Public Law 106–117, approved Nov. 30, 1999)

SEC. 113. [38 U.S.C. 8111 note] ACCESS TO CARE FOR TRICARE-ELIGIBLE MILITARY RETIREES.

(a) INTERAGENCY AGREEMENT.—(1) The Secretary of Defense shall enter into an agreement (characterized as a memorandum of understanding or otherwise) with the Secretary of Veterans Affairs with respect to the provision of medical care by the Secretary of Veterans Affairs to eligible military retirees in accordance with the provisions of subsection (c). That agreement shall include provisions for reimbursement of the Secretary of Veterans Affairs by the Secretary of Defense for medical care provided by the Secretary of Veterans Affairs to an eligible military retiree and may include such other provisions with respect to the terms and conditions of such care as may be agreed upon by the two Secretaries.

(2) Reimbursement under the agreement under paragraph (1) shall be in accordance with rates agreed upon by the Secretary of Defense and the Secretary of Veterans Affairs. Such reimbursement may be made by the Secretary of Defense or by the appropriate TRICARE Managed Care Support contractor, as determined in accordance with that agreement.

(3) In entering into the agreement under paragraph (1), particularly with respect to determination of the rates of reimbursement under paragraph (2), the Secretary of Defense shall consult with TRICARE Managed Care Support contractors.

(4) The Secretary of Veterans Affairs may not enter into an agreement under paragraph (1) for the provision of care in accordance with the provisions of subsection (c) with respect to any geographic service area, or a part of any such area, of the Veterans Health Administration unless—

(A) in the judgment of that Secretary, the Department of Veterans Affairs will recover the costs of providing such care to eligible military retirees; and

(B) that Secretary has certified and documented, with respect to any geographic service area in which the Secretary proposes to provide care in accordance with the provisions of subsection (c), that such geographic service area, or designated part of any such area, has adequate capacity (consistent with the requirements in section 1705(b)(1) of title 38, United States

Code, that care to enrollees shall be timely and acceptable in quality) to provide such care.

(5) The agreement under paragraph (1) shall be entered into by the Secretaries not later than nine months after the date of the enactment of this Act. If the Secretaries are unable to reach agreement, they shall jointly report, by that date or within 30 days thereafter, to the Committees on Armed Services and the Committees on Veterans' Affairs of the Senate and House of Representatives on the reasons for their inability to reach an agreement and their mutually agreed plan for removing any impediments to final agreement.

(b) DEPOSITING OF REIMBURSEMENTS.—Amounts received by the Secretary of Veterans Affairs under the agreement under subsection (a) shall be deposited in the Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of title 38, United States Code, as added by section 202.

(c) COPAYMENT REQUIREMENT.—The provisions of subsections (f)(1) and (g)(1) of section 1710 of title 38, United States Code, shall not apply in the case of an eligible military retiree who is covered by the agreement under subsection (a).

(d) PHASED IMPLEMENTATION.—(1) The Secretary of Defense shall include in each TRICARE contract entered into after the date of the enactment of this Act provisions to implement the agreement under subsection (a).

(2) The provisions of the agreement under subsection (a)(2) and the provisions of subsection (c) shall apply to the furnishing of medical care by the Secretary of Veterans Affairs in any area of the United States only if that area is covered by a TRICARE contract that was entered into after the date of the enactment of this Act.

(e) ELIGIBLE MILITARY RETIREES.—For purposes of this section, an eligible military retiree is a member of the Army, Navy, Air Force, or Marine Corps who—

(1) has retired from active military, naval, or air service;

(2) is eligible for care under the TRICARE program established by the Secretary of Defense;

(3) has enrolled for care under section 1705 of title 38, United States Code; and

(4) is not described in paragraph (1) or (2) of section 1710(a) of such title.

---

f. Joint Initiatives With Department of Veterans Affairs

Subtitle E of title VII of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

Subtitle E—Joint Initiatives With Department of Veterans Affairs

SEC. 741. [38 U.S.C. 8111 note] VA-DOD SHARING AGREEMENTS FOR HEALTH SERVICES.

(a) PRIMACY OF SHARING AGREEMENTS.—The Secretary of Defense shall—

(1) give full force and effect to any agreement into which the Secretary or the Secretary of a military department entered under section 8111 of title 38, United States Code, or under section 1535 of title 31, United States Code, which was in effect on September 30, 1999; and

(2) ensure that the Secretary of the military department concerned directly reimburses the Secretary of Veterans Affairs for any services or resources provided under such agreement in accordance with the terms of such agreement, including terms providing for reimbursement from funds available for that military department.

(b) MODIFICATION OR TERMINATION.—Any agreement described in subsection (a) shall remain in effect in accordance with such subsection unless, during the 12-month period following the date of the enactment of this Act, such agreement is modified or terminated in accordance with the terms of such agreement.

SEC. 742. [10 U.S.C. 1071 note] PROCESSES FOR PATIENT SAFETY IN MILITARY AND VETERANS HEALTH CARE SYSTEMS.

(a) ERROR TRACKING PROCESS.—The Secretary of Defense shall implement a centralized process for reporting, compilation, and analysis of errors in the provision of health care under the defense health program that endanger patients beyond the normal risks associated with the care and treatment of such patients. To the extent practicable, that process shall emulate the system established by the Secretary of Veterans Affairs for reporting, compilation, and analysis of errors in the provision of health care under the Department of Veterans Affairs health care system that endanger patients beyond such risks.

(b) SHARING OF INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs—

(1) shall share information regarding the designs of systems or protocols established to reduce errors in the provision of health care described in subsection (a); and

(2) shall develop such protocols as the Secretaries consider necessary for the establishment and administration of effective processes for the reporting, compilation, and analysis of such errors.

SEC. 743. [10 U.S.C. 1071 note] COOPERATION IN DEVELOPING PHARMACEUTICAL IDENTIFICATION TECHNOLOGY.

The Secretary of Defense and the Secretary of Veterans Affairs shall cooperate in developing systems for the use of bar codes for the identification of pharmaceuticals in the health care programs of the Department of Defense and the Department of Veterans Affairs. In any case in which a common pharmaceutical is used in such programs, the bar codes for those pharmaceuticals shall, to the maximum extent practicable, be identical.

4. TRICARE AND CHAMPUS PROGRAMS

a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle C—TRICARE Program

SEC. 721. [10 U.S.C. 1073 note] IMPROVEMENT OF ACCESS TO HEALTH CARE UNDER THE TRICARE PROGRAM.

(a) WAIVER OF NONAVAILABILITY STATEMENT OR PREAUTHORIZATION.—In the case of a covered beneficiary under chapter 55 of title 10, United States Code, who is enrolled in TRICARE Standard, the Secretary of Defense may not require with regard to authorized health care services (other than mental health services) under any new contract for the provision of health care services under such chapter that the beneficiary—

(1) obtain a nonavailability statement or preauthorization from a military medical treatment facility in order to receive the services from a civilian provider; or

(2) obtain a nonavailability statement for care in specialized treatment facilities outside the 200-mile radius of a military medical treatment facility.

(b) NOTICE.—The Secretary may require that the covered beneficiary inform the primary care manager of the beneficiary of any health care received from a civilian provider or in a specialized treatment facility.

(c) EXCEPTIONS.—Subsection (a) shall not apply if—

(1) the Secretary demonstrates significant costs would be avoided by performing specific procedures at the affected military medical treatment facilities;

(2) the Secretary determines that a specific procedure must be provided at the affected military medical treatment facility to ensure the proficiency levels of the practitioners at the facility; or

(3) the lack of nonavailability statement data would significantly interfere with TRICARE contract administration.

(d) EFFECTIVE DATE.—This section shall take effect on October 1, 2001.

* * * * * * *

SEC. 723. [10 U.S.C. 1073 note] MODERNIZATION OF TRICARE BUSINESS PRACTICES AND INCREASE OF USE OF MILITARY TREATMENT FACILITIES.

(a) REQUIREMENT TO IMPLEMENT INTERNET-BASED SYSTEM.—Not later than October 1, 2001, the Secretary of Defense shall implement a system to simplify and make accessible through the use of the Internet, through commercially available systems and products, critical administrative processes within the military health care system and the TRICARE program. The purposes of the system shall be to enhance efficiency, improve service, and achieve commercially recognized standards of performance.

(b) ELEMENTS OF SYSTEM.—The system required by subsection (a)—

(1) shall comply with patient confidentiality and security requirements, and incorporate data requirements, that are currently widely used by insurers under medicare and commercial insurers;

(2) shall be designed to achieve improvements with respect to—

(A) the availability and scheduling of appointments;

(B) the filing, processing, and payment of claims;

(C) marketing and information initiatives;

(D) the continuation of enrollments without expiration;

(E) the portability of enrollments nationwide;

(F) education of beneficiaries regarding the military health care system and the TRICARE program; and

(G) education of health care providers regarding such system and program; and

(3) may be implemented through a contractor under TRICARE Prime.

(c) AREAS OF IMPLEMENTATION.—The Secretary shall implement the system required by subsection (a) in at least one region under the TRICARE program.

(d) PLAN FOR IMPROVED PORTABILITY OF BENEFITS.—Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to provide portability and reciprocity of benefits for all enrollees under the TRICARE program throughout all TRICARE regions.

(e) INCREASE OF USE OF MILITARY MEDICAL TREATMENT FACILITIES.—The Secretary shall initiate a program to maximize the use of military medical treatment facilities by improving the efficiency of health care operations in such facilities.

(f) DEFINITION.—In this section the term "TRICARE program" has the meaning given such term in section 1072 of title 10, United States Code.

SEC. 724. [10 U.S.C. 1073 note] EXTENSION OF TRICARE MANAGED CARE SUPPORT CONTRACTS.

(a) AUTHORITY.—Notwithstanding any other provision of law and subject to subsection (b), any TRICARE managed care support contract in effect, or in the final stages of acquisition, on September 30, 1999, may be extended for four years.

(b) CONDITIONS.—Any extension of a contract under subsection (a)—

(1) may be made only if the Secretary of Defense determines that it is in the best interest of the United States to do so; and

(2) shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Federal Government.

---

b. Department of Defense Appropriations Act, 2001

(Public Law 106–259, approved Aug. 9, 2000)

SEC. 8090. [10 U.S.C. 1073 note] Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 2000, may be extended for 2 years: *Provided*, That any such extension may only take place if the Secretary of Defense determines that it is in the best interest of the Government: *Provided further*, That any contract extension shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Government: *Provided further*, That notwithstanding any other provision of law, all future TRICARE managed care support contracts replacing contracts in effect, or in the final stages of acquisition as of September 30, 2000, may include a base contract period for transition and up to seven 1-year option periods.

---

c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle C—Health Care Services for Medicare-Eligible Department of Defense Beneficiaries

* * * * * * *

SEC. 723. [10 U.S.C. 1073 note] IMPLEMENTATION OF REDESIGN OF PHARMACY SYSTEM.

(a) IN GENERAL.—Not later than April 1, 2001, the Secretary of Defense shall implement, with respect to eligible individuals described in subsection (e), the redesign of the pharmacy system under TRICARE (including the mail-order and retail pharmacy benefit under TRICARE) to incorporate "best business practices" of the private sector in providing pharmaceuticals, as developed under the plan described in section 703.

(b) PROGRAM REQUIREMENTS.—The same coverage for pharmacy services and the same requirements for cost sharing and reimbursement as are applicable under section 1086 of title 10, United States Code, shall apply with respect to the program required by subsection (a).

(c) EVALUATION.—The Secretary shall provide for an evaluation of the implementation of the redesign of the pharmacy system under TRICARE under this section by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

(1) An analysis of the costs of the implementation of the redesign of the pharmacy system under TRICARE and to the eligible individuals who participate in the system.

(2) An assessment of the extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE.

(3) An assessment of the effect, if any, of the implementation of the system on military medical readiness.

(4) A description of the rate of the participation in the system of the individuals who were eligible to participate.

(5) An evaluation of any other matters that the Secretary considers appropriate.

(d) REPORTS.—The Secretary shall submit two reports on the results of the evaluation under subsection (c), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The first report shall be submitted not later than December 31, 2001, and the second report shall be submitted not later than December 31, 2003.

(e) ELIGIBLE INDIVIDUALS.—(1) An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

(A) is 65 years of age or older;

(B) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.); and

(C) except as provided in paragraph (2), is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.).

(2) Paragraph (1)(C) shall not apply in the case of an individual who, before April 1, 2001, has attained the age of 65 and did not enroll in the program described in such paragraph.

SEC. 724. [10 U.S.C. 1108 note] COMPREHENSIVE EVALUATION OF IMPLEMENTATION OF DEMONSTRATION PROJECTS AND TRICARE PHARMACY REDESIGN.

Not later than March 31, 2003, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report containing a comprehensive comparative analysis of the FEHBP demonstration project conducted under section 1108 of title 10, United States Code (as added by section 721), the TRICARE

Senior Supplement under section 722[1], and the redesign of the TRICARE pharmacy system under section 723. The comprehensive analysis shall incorporate the findings of the evaluation submitted under section 723(c) and the report submitted under subsection (j) of such section 1108.

---

d. National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle B—TRICARE Program

SEC. 711. DEFINITION OF TRICARE PROGRAM.

For purposes of this subtitle, the term "TRICARE program" means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such 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.

* * * * * * *

SEC. 715. [10 U.S.C. 1073 note] TRAINING IN HEALTH CARE MANAGEMENT AND ADMINISTRATION FOR TRICARE LEAD AGENTS.

(a) PROVISION OF TRAINING.—The Secretary of Defense shall implement a professional educational program to provide appropriate training in health care management and administration—

(1) to each commander, deputy commander, and managed care coordinator of a military medical treatment facility of the Department of Defense, and any other person, who is selected to serve as a lead agent to coordinate the delivery of health care by military and civilian providers under the TRICARE program; and

(2) to appropriate members of the support staff of the treatment facility who will be responsible for daily operation of the TRICARE program.

(b) LIMITATION ON ASSIGNMENT UNTIL COMPLETION OF TRAINING.—No person may be assigned as the commander, deputy commander, or managed care coordinator of a military medical treatment facility or as a TRICARE lead agent or senior member of the staff of a TRICARE lead agent office until the Secretary of the military department concerned submits a certification to the Secretary of Defense that such person has completed the training described in subsection (a).

* * * * * * *

---

[1] For an up-to-date version of the TRICARE Senior Supplement, which is a demonstration project to assess the provision of medical care coverage under the TRICARE program to the certain individuals eligible for medicare, see item 5 in this compilation of military heath care laws.

SEC. 717. [10 U.S.C. 1073 note] EVALUATION AND REPORT ON TRICARE PROGRAM EFFECTIVENESS.

(a) EVALUATION REQUIRED.—The Secretary of Defense shall arrange for an on-going evaluation of the effectiveness of the TRICARE program in meeting the goals of increasing the access of covered beneficiaries under chapter 55 of title 10, United States Code, to health care and improving the quality of health care provided to covered beneficiaries, without increasing the costs incurred by the Government or covered beneficiaries. The evaluation shall specifically address—

(1) the impact of the TRICARE program on military retirees with regard to access, costs, and quality of health care services; and

(2) identify noncatchment areas in which the health maintenance organization option of the TRICARE program is available or is proposed to become available.

(b) ENTITY TO CONDUCT EVALUATION.—The Secretary may use a federally funded research and development center to conduct the evaluation required by subsection (a).

(c) ANNUAL REPORT.—Not later than March 1, 1997, and each March 1 thereafter, the Secretary shall submit to Congress a report describing the results of the evaluation under subsection (a) during the preceding year.

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 743. [10 U.S.C. 1086 note] WAIVER OF COLLECTION OF PAYMENTS DUE FROM CERTAIN PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE COLLECTION.—The administering Secretaries may waive the collection of payments otherwise due from a person described in subsection (b) as a result of the receipt by the person of health benefits under section 1086 of title 10, United States Code, after the termination of the person's eligibility for such benefits.

(b) PERSONS ELIGIBLE FOR WAIVER.—A person shall be eligible for relief under subsection (a) if the person—

(1) is a person described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) in the absence of such paragraph, would have been eligible for health benefits under such section; and

(3) at the time of the receipt of such benefits, satisfied the criteria specified in subparagraphs (A) and (B) of paragraph (2) of such subsection.

(c) EXTENT OF WAIVER AUTHORITY.—The authority to waive the collection of payments pursuant to this section shall apply with regard to health benefits provided under section 1086 of title 10, United States Code, to persons described in subsection (b) during the period beginning on January 1, 1967, and ending on the later of—

(1) the termination date of any special enrollment period provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) specifically for such persons; and

(2) July 1, 1996.

(d) DEFINITIONS.—For purposes of this section, the term "administering Secretaries" has the meaning given such term in section 1072(3) of title 10, United States Code.

---

e. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 731. [10 U.S.C. 1073 note] USE OF HEALTH MAINTENANCE ORGANIZATION MODEL AS OPTION FOR MILITARY HEALTH CARE.

(a) USE OF MODEL.—The Secretary of Defense shall prescribe and implement a health benefit option (and accompanying cost-sharing requirements) for covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code, that is modelled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs. The Secretary shall include, to the maximum extent practicable, the health benefit option required under this subsection as one of the options available to covered beneficiaries in all managed health care initiatives undertaken by the Secretary after December 31, 1994.

(b) ELEMENTS OF OPTION.—The Secretary shall offer covered beneficiaries who enroll in the health benefit option required under subsection (a) reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States. The Secretary shall allow enrollees to seek health care outside of the option, except that the Secretary may prescribe higher out-of-pocket costs than are provided under section 1079 or 1086 of title 10, United States Code, for enrollees who obtain health care outside of the option.

(c) GOVERNMENT COSTS.—The health benefit option required under subsection (a) shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than the costs that would otherwise be incurred to provide health care to the members of the uniformed services and covered beneficiaries who participate in the TRICARE program.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "covered beneficiary" means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

(2) The term "TRICARE program" means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially under-

write the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

(e) REGULATIONS.—Not later than December 31, 1994, the Secretary shall prescribe final regulations to implement the health benefit option required by subsection (a).

(f) MODIFICATION OF EXISTING CONTRACTS.—In the case of managed health care contracts in effect or in final stages of acquisition as of December 31, 1994, the Secretary may modify such contracts to incorporate the health benefit option required under subsection (a).

---

f. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

Subtitle B—Health Care Management

SEC. 711. [10 U.S.C. 1106 note] NATIONAL CLAIMS PROCESSING SYSTEM FOR CHAMPUS.

(a) CLAIMS PROCESSING SYSTEM REQUIRED.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall provide by contract for the operation of a claims processing system to be known as the "National Claims Processing System for CHAMPUS". The Secretary may procure the system in installments, including the use of incremental modules. The system, including completion and integration of all modules, shall be in full operation not later than seven years after the date of the enactment of this Act.

(2) The Secretary shall use competitive procedures for entering into any contract or contracts under paragraph (1).

(b) SYSTEM FUNCTIONS.—The claims processing system shall include at least the following functions:

(1) The maintenance in electronic or written form, or both, of appropriate information on health care services provided to covered beneficiaries by or through third parties under CHAMPUS or any alternative CHAMPUS program or demonstration project. Such information shall include—

(A) the services to which such beneficiaries are entitled or eligible under an insurance plan, medical service plan, or health plan under CHAMPUS;

(B) the insurers, medical services, or health plans that provide such services; and

(C) the services available to beneficiaries under each insurance plan, medical service plan, or health plan, and the payment required of the beneficiaries and the insurer, medical service, or health plan for such services under the plan.

(2) The ability to receive in electronic or written form claims submitted by insurers, medical services, and health plans for services provided to covered beneficiaries.

(3) The ability to process, adjudicate, and pay (by electronic or other means) such claims.

(4) The provision of the information described in paragraphs (1) and (2) and information on the matters referred to in paragraph (3) by telephone, electronic, or other means to covered beneficiaries, insurers, medical services, and health plans.

(c) CONSISTENCY WITH MEDICARE CLAIMS REQUIREMENTS.—The Secretary of Defense shall ensure, to the maximum extent practicable, that claims submitted to the claims processing system conform to the requirements applicable to claims submitted to the Secretary of Health and Human Services with respect to medical care provided under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(d) IDENTIFICATION CARD.—The Secretary of Defense shall take appropriate actions to determine whether the use by covered beneficiaries of a standard identification card containing electronically readable information will enhance the capability of the claims processing center to carry out the activities set forth in subsection (b).

(e) TRANSITION TO SYSTEM.—After January 1, 1996, any modification or acquisition related to claims processing systems operations in the Office of the Civilian Health and Medical Program of the Uniformed Services shall contain provisions to transfer such operations to the claims processing system required by subsection (a). After January 1, 1999, any renewal or acquisition for fiscal intermediary services (including coordinated care implementations in military hospitals and clinics) shall contain provisions to transfer claims processing systems operations related to such fiscal intermediary services to the claims processing system required by subsection (a).

(f) DEFINITIONS.—For purposes of this section:

(1) The term "administering Secretaries" has the meaning given that term in paragraph (3) of section 1072 of title 10, United States Code.

(2) The term "CHAMPUS" means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of such section.

(3) The term "covered beneficiary" has the meaning given that term in paragraph (5) of such section.

SEC. 712. [10 U.S.C. 1073 note] CONDITION ON EXPANSION OF CHAMPUS REFORM INITIATIVE TO OTHER LOCATIONS.

(a) CONDITION.—(1) Except as provided in subsection (b), the Secretary of Defense may not expand the CHAMPUS reform initiative underway in the States of California and Hawaii to another location until not less than 90 days after the date on which the Secretary certifies to Congress that expansion of the initiative to that location is the most efficient method of providing health care to covered beneficiaries in that location. In determining whether the expansion of the CHAMPUS reform initiative to a location is the most efficient method of providing health care to covered beneficiaries in that location, the Secretary shall consider the cost-effectiveness of the initiative (while assuring that the combined cost of care in military treatment facilities and under the Civilian Health and Medical Program of the Uniformed Services will not be in-

creased as a result of the expansion) and the effect of the expansion of the initiative on the access of covered beneficiaries to health care and on the quality of health care received by covered beneficiaries.

(2) To the extent any revision of the CHAMPUS reform initiative is necessary in order to make the certification required by this subsection, the Secretary shall assure that enrolled covered beneficiaries may obtain health care services with reduced out-of-pocket costs, as compared to standard CHAMPUS.

(b) EXCEPTION.—The Secretary of Defense may waive the operation of the condition on the expansion of the CHAMPUS reform initiative specified in subsection (a) in order to expand the initiative to a location adversely affected by the closure or realignment of a military installation in that location, as determined by the Secretary.

(c) EVALUATION OF CERTIFICATION.—The Comptroller General of the United States and the Director of the Congressional Budget Office shall evaluate each certification made by the Secretary of Defense under subsection (a) that expansion of the CHAMPUS reform initiative to another location is the most efficient method of providing health care to covered beneficiaries in that location. They shall submit their findings to Congress if these findings differ substantially from the findings upon which the Secretary made the decision to expand the CHAMPUS reform initiative.

(d) DEFINITIONS.—For purposes of this section:

(1) The terms "CHAMPUS reform initiative" and "initiative" mean the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

(2) The term "covered beneficiary" has the meaning given that term in section 1072(5) of title 10, United States Code.

(3) The terms "Civilian Health and Medical Program of the Uniformed Services" and "CHAMPUS" have the meaning given the term "Civilian Health and Medical Program of the Uniformed Services" in section 1072(4) of title 10, United States Code.

* * * * * * *

SEC. 715. POSITIVE INCENTIVES UNDER THE COORDINATED CARE PROGRAM.

(a) INCLUSION OF POSITIVE INCENTIVES FOR ENROLLMENT.—The Secretary of Defense shall modify the Policy Guidelines on the Department of Defense Coordinated Care Program to provide covered beneficiaries with additional positive incentives to enroll in the Coordinated Care Program of the Department of Defense.

(b) TYPES OF POSITIVE INCENTIVES.—The positive incentives provided under subsection (a) may include—

(1) a reduction of the copayment and deductibles prescribed under sections 1079 and 1086 of title 10, United States Code, for covered beneficiaries who enroll in the Coordinated Care Program;

(2) alternative cost-sharing requirements for certain types of care; and

(3) an expansion of the benefits provided under the Coordinated Care Program beyond the benefits authorized under CHAMPUS.

(c) EFFECT ON CERTAIN EXISTING PROGRAMS.—The modification required under subsection (a) shall permit health care demonstration projects in existence on the date of the enactment of this Act (including the CHAMPUS reform initiative, the catchment area management projects, the CHAMPUS select fiscal intermediary program in the Southeast Region, and the managed health care program established in the Tidewater region of Virginia) and future managed health care initiatives undertaken by the Department of Defense to offer covered beneficiaries who do not enroll in the Coordinated Care Program the opportunity to use a preferred provider network of health care providers.

(d) DETERMINATION OF INCENTIVES.—In determining what level and types of positive incentives are likely to induce covered beneficiaries to enroll in the Coordinated Care Program, the Secretary of Defense shall take into consideration the extent to which covered beneficiaries not enrolled in the program are permitted to choose health care providers without prior referral or approval.

(e) PROHIBITION ON EXCLUSIONS.—Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary of Defense may not deny access to military treatment facilities to covered beneficiaries who do not enroll in the Coordinated Care Program. However, the Secretary may establish reasonable admission preferences for covered beneficiaries enrolled in the program as an incentive to encourage enrollment.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "CHAMPUS" means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of section 1072 of title 10, United States Code.

(2) The term "covered beneficiary" has the meaning given that term in paragraph (5) of such section.

(3) The term "Policy Guidelines on the Department of Defense Coordinated Care Program" means the Policy Guidelines on the Department of Defense Coordinated Care Program that were issued by the Assistant Secretary of Defense for Health Affairs on January 8, 1992.

---

g. National Defense Authorization Act for Fiscal Years 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 722. [10 U.S.C. 1073 note] AUTHORIZATION FOR THE EXTENSION OF CHAMPUS REFORM INITIATIVE.

(a) AUTHORITY.—Upon the termination (for any reason) of the contract of the Department of Defense in effect on the date of the enactment of this Act under the CHAMPUS reform initiative established under section 702 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 1073 note), the Secretary of De-

fense may enter into a replacement or successor contract with the same or a different contractor and for such amount as may be determined in accordance with applicable procurement laws and regulations and without regard to any limitation (enacted before, on, or after the date of the enactment of this Act) on the availability of funds for that purpose.

(b) TREATMENT OF LIMITATION ON FUNDS FOR PROGRAM.—No provision of law stated as a limitation on the availability of funds may be treated as constituting the extension of, or as requiring the extension of, any contract under the CHAMPUS reform initiative that would otherwise expire in accordance with its terms.

---

h. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 715. [10 U.S.C. 1073 note] CONDITIONS ON EXPANSION OF CHAMPUS REFORM INITIATIVE

(a) CERTIFICATION OF COST-EFFECTIVENESS.—The Secretary of Defense may not proceed with the proposed expansion of the CHAMPUS reform initiative underway in the States of California and Hawaii until not less than 90 days after the date on which the Secretary certifies to the Congress that—

(1) such CHAMPUS reform initiative has been demonstrated to be more cost-effective than the Civilian Health and Medical Program of the Uniformed Services or any other health care demonstration program being conducted by the Secretary;

(2) the contractor selected to underwrite the delivery of health care under the CHAMPUS reform initiative will accomplish the expansion without the disruption of services to beneficiaries under the Civilian Health and Medical Program of the Uniformed Services or delays in the processing of claims; and

(3) such contractor is currently, and projected to remain, financially able to underwrite the CHAMPUS reform initiative.

(b) REPORT ON CERTIFICATION.—Not later than 30 days after the date on which the Secretary of Defense submits the certification required by subsection (a), the Comptroller General of the United States and the Director of the Congressional Budget Office shall jointly submit to Congress a report evaluating such certification.

(c) CHAMPUS REFORM INITIATIVE DEFINED.—For purposes of this section, the term "CHAMPUS reform initiative" has the meaning given that term in section 702(d)(1) of the Department of Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 1073 note).

---

5. TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION

Section 722 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 722. [10 U.S.C. 1073 note] TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION.

(a) IN GENERAL.—(1) The Secretary of Defense shall, after consultation with the other administering Secretaries, carry out a demonstration project in order to assess the feasibility and advisability of providing medical care coverage under the TRICARE program to the individuals described in subsection (c). The demonstration project shall be known as the "TRICARE Senior Supplement".

(2) The Secretary shall commence the demonstration project not later than January 1, 2000, and shall terminate the demonstration project not later than December 31, 2002.

(3) Under the demonstration project, the Secretary shall permit eligible individuals described in subsection (c) to enroll in the TRICARE program.

(4) Payment for care and services received by eligible individuals who enroll in the TRICARE program under the demonstration project shall be made as follows:

(A) First, under title XVIII of the Social Security Act, but only to the extent that payment for such care and services is provided for under that title.

(B) Second, under the TRICARE program, but only to the extent that payment for such care and services is provided under that program and is not provided for under subparagraph (A).

(C) Third, by the eligible individual concerned, but only to the extent that payment for such care and services is not provided for under subparagraph (A) or (B).

(5)(A) The Secretary shall require each eligible individual who enrolls in the TRICARE program under the demonstration project to pay an enrollment fee. The Secretary shall provide, to the extent feasible, the option of payment of the enrollment fee through electronic transfers of funds and through withholding of such payment from the pay of a member or former member of the Armed Forces, and shall provide the option that payment of the enrollment fee be made in full at the beginning of the enrollment period or that payments be made on a monthly or quarterly basis.

(B) The amount of the enrollment fee charged an eligible individual under subparagraph (A) for self-only or family enrollment in any year may not exceed the amount equal to 75 percent of the

total subscription charges in that year for self-only or family, respectively, fee-for-service coverage under the health benefits plan under the Federal Employees Health Benefits program under chapter 89 of title 5, United States Code, that is most similar in coverage to the TRICARE program.

(6) A covered beneficiary who enrolls in TRICARE Senior Supplement under this subsection shall not be eligible to receive health care at a facility of the uniformed services during the period such enrollment is in effect.

(b) EVALUATION; REVIEW.—(1) The Secretary shall provide for an evaluation of the demonstration project conducted under this subsection by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

(A) An analysis of the costs of the demonstration project to the United States and to the eligible individuals who participate in such demonstration project.

(B) An assessment of the extent to which the demonstration project satisfies the requirements of such eligible individuals for the health care services available under the demonstration project.

(C) An assessment of the effect, if any, of the demonstration project on military medical readiness.

(D) A description of the rate of the enrollment in the demonstration project of the individuals who were eligible to enroll in the demonstration project.

(E) An assessment of whether the demonstration project provides the most suitable model for a program to provide adequate health care services to the population of individuals consisting of the eligible individuals.

(F) An evaluation of any other matters that the Secretary considers appropriate.

(2) The Comptroller General shall review the evaluation conducted under paragraph (1). In carrying out the review, the Comptroller General shall—

(A) assess the validity of the processes used in the evaluation; and

(B) assess the validity of any findings under the evaluation, including any limitations with respect to the data contained in the evaluation as a result of the size and design of the demonstration project.

(3)(A) The Secretary shall submit a report on the results of the evaluation under paragraph (1), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than December 31, 2002.

(B) The Comptroller General shall submit a report on the results of the review under paragraph (2) to the committees referred to in subparagraph (A) not later than February 15, 2003.

(c) ELIGIBLE INDIVIDUALS.—An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of

a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

(1) is 65 years of age or older;

(2) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

(3) is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.); and

(4) resides in an area selected by the Secretary under subsection (d).

(d) AREAS OF IMPLEMENTATION.—(1) The Secretary shall carry out the demonstration project under this section in two separate areas selected by the Secretary.

(2) The areas selected by the Secretary under paragraph (1) shall be as follows:

(A) One area shall be an area outside the catchment area of a military medical treatment facility in which—

(i) no eligible organization has a contract in effect under section 1876 of the Social Security Act (42 U.S.C. 1395mm) and no Medicare+Choice organization has a contract in effect under part C of title XVIII of that Act (42 U.S.C. 1395w–21); or

(ii) the aggregate number of enrollees with an eligible organization with a contract in effect under section 1876 of that Act or with a Medicare+Choice organization with a contract in effect under part C of title XVIII of that Act is less than 2.5 percent of the total number of individuals in the area who are entitled to hospital insurance benefits under part A of title XVIII of that Act.

(B) The other area shall be an area outside the catchment area of a military medical treatment facility in which—

(i) at least one eligible organization has a contract in effect under section 1876 of that Act or one Medicare+Choice organization has a contract in effect under part C of title XVIII of that Act; and

(ii) the aggregate number of enrollees with an eligible organization with a contract in effect under section 1876 of that Act or with a Medicare+Choice organization with a contract in effect under part C of title XVIII of that Act exceeds 10 percent of the total number of individuals in the area who are entitled to hospital insurance benefits under part A of title XVIII of that Act.

(e) DEFINITIONS.—In this section:

(1) The term "administering Secretaries" has the meaning given that term in section 1072(3) of title 10, United States Code.

(2) The term "TRICARE program" has the meaning given that term in section 1072(7) of title 10, United States Code.

6. MEDICARE SUBVENTION PROGRAM FOR MILITARY RETIREES

Section 1896 of title XVIII of the Social Security Act (42 U.S.C. 1395ggg)

(as added by section 4015 of the Balanced Budget Act of 1997; Public Law 105–33, approved August 5, 1997)

MEDICARE SUBVENTION PROGRAM FOR MILITARY RETIREES [1]

SEC. 1896. [42 U.S.C. 1395ggg] (a) DEFINITIONS.—In this section:

(1) ADMINISTERING SECRETARIES.—The term "administering Secretaries" means the Secretary and the Secretary of Defense acting jointly.

(2) PROGRAM.—The term 'program' means the program carried out under this section.

(3) DESIGNATED PROVIDER.—The term "designated provider" has the meaning given that term in section 721(5) of the National Defense Authorization Act For Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).

(4) MEDICARE-ELIGIBLE MILITARY RETIREE OR DEPENDENT.—The term "medicare-eligible military retiree or dependent" means an individual described in section 1074(b) or 1076(b) of title 10, United States Code, who—

(A) would be eligible for health benefits under section 1086 of such title by reason of subsection (c)(1) of such section 1086 but for the operation of subsection (d) of such section 1086; [2]

(B)(i) is entitled to benefits under part A of this title; and

---

[1] This section was originally enacted as a demonstration project. Subsection (c)(2) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–177) renamed it as a program and made conforming changes throughout the text of the section. The amendments have been executed, however the amendments are actually conditioned by subsection (f) of such section as follows:

(f) CONDITIONAL EFFECTIVE DATE.—(1) Upon negotiating an agreement under the amendment made by subsection (c)(1), the Secretary of Defense and the Secretary of Health and Human Services shall jointly transmit a notification of the proposed agreement to the Committee on Armed Services and the Committee on Finance of the Senate and the Committee on Armed Services and the Committee on Ways and Means of the House of Representatives, and shall include with the transmittal a copy of the proposed agreement and all related agreements and supporting documents.

(2) Such proposed agreement shall take effect, and the amendments made by subsections (c)(2), (c)(3), (d), and (e) shall take effect, on such date as is provided for in such agreement and in an Act enacted after the date of the enactment of this Act.

[2] Effective October 1, 2001, section 1896(a)(4)(A) is amended to read as follows:

"(A) is eligible for health benefits under section 1086 of such title by reason of subsection (c)(1) of such section;".

See section 712(a)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–177).

(ii) if the individual was entitled to such benefits before July 1, 1997, received health care items or services from a health care facility of the uniformed services before that date, but after becoming entitled to benefits under part A of this title;

(C) is enrolled for benefits under part B of this title; and

(D) has attained age 65.

(5) MEDICARE HEALTH CARE SERVICES.—The term "medicare health care services" means items or services covered under part A or B of this title.

(6) MILITARY TREATMENT FACILITY.—The term "military treatment facility" means a facility referred to in section 1074(a) of title 10, United States Code.

(7) TRICARE.—The term "TRICARE" has the same meaning as the term "TRICARE program" under section 711 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 1073 note).

(8) TRUST FUNDS.—The term "trust funds" means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.

(b) PROGRAM.—

(1) IN GENERAL.—

(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish a program (under an agreement entered into by the administering Secretaries) under which the Secretary shall reimburse the Secretary of Defense, from the trust funds, for medicare health care services furnished to certain medicare-eligible military retirees or dependents in a military treatment facility or by a designated provider.

(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—

(i) a description of the benefits to be provided to the participants of the program established under this section;

(ii) a description of the eligibility rules for participation in the program, including any cost sharing requirements;

(iii) a description of how the program satisfy the requirements under this title;

(iv) a description of the sites selected under paragraph (2);

(v) a description of how reimbursement requirements under subsection (i) and maintenance of effort requirements under subsection (j) will be implemented in the program;

(vi) a statement that the Secretary shall have access to all data of the Department of Defense that the Secretary determines is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the program;

(vii) a description of any requirement that the Secretary waives pursuant to subsection (d); and

(viii) a certification, provided after review by the administering Secretaries, that any entity that is receiving payments by reason of the program has sufficient—

(I) resources and expertise to provide, consistent with payments under subsection (i), the full range of benefits required to be provided to beneficiaries under the program; and

(II) information and billing systems in place to ensure the accurate and timely submission of claims for benefits and to ensure that providers of services, physicians, and other health care professionals are reimbursed by the entity in a timely and accurate manner.

(2) NUMBER OF SITES.—The program established under this section shall be conducted in no more than 6 sites, designated jointly by the administering Secretaries after review of all TRICARE regions. [1]

(3) RESTRICTION.—No new military treatment facilities will be built or expanded with funds from the program.

(4) DURATION.—The administering Secretaries shall conduct the program during the 4-year period beginning on January 1, 1998, except that the administering Secretaries may negotiate and (subject to section 701(f) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001) enter into a new or revised agreement under paragraph (1)(A) to continue the program after the end of such period. If the program is so continued, the administering Secretaries may terminate the agreement under which the program operates after providing notice to Congress in accordance with subsection (k)(2)(B)(v).

(5) REPORT.—At least 60 days prior to the commencement of the program, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) to the committees of jurisdiction under this title.

(c) CREDITING OF PAYMENTS.—A payment received by the Secretary of Defense under the program shall be credited to the applicable Department of Defense medical appropriation (and within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Defense during the fiscal year during which the payment is received.

(d) WAIVER OF CERTAIN MEDICARE REQUIREMENTS.—

(1) AUTHORITY.—

---

[1] Subject to the conditional effective date referred to in the first footnote to this section, subsection (d)(1) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–178) would amend subsection (b)(2) as follows:

(d) AUTHORIZING PROGRAM EXPANSION AND MODIFICATIONS.—(1) Paragraph (2) of subsection (b) of such section 1896 is amended to read as follows:

"(2) LOCATION OF SITES.—Subject to subsection (k)(2)(B), the program shall be conducted in any site that is designated jointly by the administering Secretaries.".

(A) IN GENERAL.—Except as provided under subparagraph (B), the program shall meet all requirements of Medicare+Choice plans under part C of this title and regulations pertaining thereto, and other requirements for receiving medicare payments, except that the prohibition of payments to Federal providers of services under sections 1814(c) and 1835(d), and paragraphs (2) and (3) of section 1862(a) shall not apply.

(B) WAIVER.—Except as provided in paragraph (2), the Secretary is authorized to waive any requirement described under subparagraph (A), or approve equivalent or alternative ways of meeting such a requirement, but only if such waiver or approval—

(i) reflects the unique status of the Department of Defense as an agency of the Federal Government; and

(ii) is necessary to carry out the program.

(2) BENEFICIARY PROTECTIONS AND OTHER MATTERS.—The program shall comply with the requirements of part C of this title that relate to beneficiary protections and other matters, including such requirements relating to the following areas: [1]

(A) Enrollment and disenrollment.

(B) Nondiscrimination.

(C) Information provided to beneficiaries.

(D) Cost-sharing limitations.

(E) Appeal and grievance procedures.

(F) Provider participation.

(G) Access to services.

(H) Quality assurance and external review.

(I) Advance directives.

(J) Other areas of beneficiary protections that the Secretary determines are applicable to such program.

(e) INSPECTOR GENERAL.—Nothing in the agreement entered into under subsection (b) shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this title for the program, including compliance with the provisions of this title and all other relevant laws.

(f) VOLUNTARY PARTICIPATION.—Participation of medicare-eligible military retirees or dependents in the program shall be voluntary.

(g) TRICARE HEALTH CARE PLANS.—

(1) MODIFICATION OF TRICARE CONTRACTS.—In carrying out the program, the Secretary of Defense is authorized to amend existing TRICARE contracts (including contracts with designated providers) in order to provide the medicare health care services to the medicare-eligible military retirees and dependents enrolled in the program consistent with part C of this title.

[1] Subject to the conditional effective date referred to in the first footnote to this section, subsection (d)(2) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–178) would amend subsection (d)(2) of this section by inserting ", or (subject to subsection (k)(2)(B)) such comparable requirements as are included in the agreement under subsection (b)(1)(A)" after "the following areas".

(2) HEALTH CARE BENEFITS.—The administering Secretaries shall prescribe the minimum health care benefits to be provided under such a plan to medicare-eligible military retirees or dependents enrolled in the plan. Those benefits shall include at least all medicare health care services covered under this title.

(h) ADDITIONAL PLANS.—Notwithstanding any provisions of title 10, United States Code, the administering Secretaries may agree to include in the program any of the Medicare+Choice plans described in section 1851(a)(2)(A), and such agreement may include an agreement between the Secretary of Defense and the Medicare+Choice organization offering such plan to provide medicare health care services to medicare-eligible military retirees or dependents and for such Secretary to receive payments from such organization for the provision of such services.

(i) PAYMENTS BASED ON REGULAR MEDICARE PAYMENT RATES.— [1]

(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall reimburse the Secretary of Defense for services provided under the program at a rate equal to 95 percent of the amount paid to a Medicare+Choice organization under part C of this title with respect to such an enrollee. In cases in which a payment amount may not otherwise be readily computed, the Secretary shall establish rules for computing equivalent or comparable payment amounts.

(2) EXCLUSION OF CERTAIN AMOUNTS.—In computing the amount of payment under paragraph (1), the following shall be excluded:

(A) SPECIAL PAYMENTS.—Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1886(d)(5) and subsection (h) of such section.

(B) PERCENTAGE OF CAPITAL PAYMENTS.—An amount determined by the administering Secretaries for amounts attributable to payments for capital-related costs under subsection (g) of such section.

(3) PERIODIC PAYMENTS FROM MEDICARE TRUST FUNDS.—Payments under this subsection shall be made—

(A) on a periodic basis consistent with the periodicity of payments under this title; and

(B) in appropriate part, as determined by the Secretary, from the trust funds.

---

[1] Subject to the conditional effective date referred to in the first footnote to this section, subsection (d)(3) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–178) would amend subsection (i) of this section as follows:

(3) Subsection (i) of such section is amended—

(A) in paragraph (2), by inserting "subject to paragraph (4)," after "paragraph (1)"; and

(B) by striking paragraph (4) and inserting the following:

"(4) MODIFICATION OF PAYMENT METHODOLOGY.—The administering Secretaries may, subject to subsection (k)(2)(B), modify the payment methodology provided under paragraphs (1) and (2) so long as the amount of the reimbursement provided to the Secretary of Defense fully reimburses the Department of Defense for its cost of providing services under the program but does not exceed an amount that is estimated to be equivalent to the amount that otherwise would have been expended under this title for such services if provided other than under the program (not including amounts described in paragraph (2)). Such limiting amount may be based for any site on the amount that would be payable to Medicare+Choice organizations under part C for the area of the site or the amounts that would be payable under parts A and B.".

(4) CAP ON AMOUNT.—The aggregate amount to be reimbursed under this subsection pursuant to the agreement entered into between the administering Secretaries under subsection (b) shall not exceed a total of— [1]

(A) $50,000,000 for calendar year 1998;
(B) $60,000,000 for calendar year 1999;
(C) $65,000,000 for calendar year 2000; and
(D) $70,000,000 for calendar year 2001.

(j) MAINTENANCE OF EFFORT.—

(1) MONITORING EFFECT OF PROGRAM ON COSTS TO MEDICARE PROGRAM.—

(A) IN GENERAL.—The administering Secretaries, in consultation with the Comptroller General, shall closely monitor the expenditures made under the medicare program for medicare-eligible military retirees or dependents during the period of the program compared to the expenditures that would have been made for such medicare-eligible military retirees or dependents during that period if the program had not been conducted. The agreement entered into by the administering Secretaries under subsection (b) shall require any participating military treatment facility to maintain the level of effort for space available care to medicare-eligible military retirees or dependents.

(B) ANNUAL REPORT BY THE COMPTROLLER GENERAL.—Not later than December 31 of each year during which the program is conducted, the Comptroller General shall submit to the administering Secretaries and the appropriate committees of Congress a report on the extent, if any, to which the costs of the Secretary under the medicare program under this title increased during the preceding fiscal year as a result of the program.

(2) REQUIRED RESPONSE IN CASE OF INCREASE IN COSTS.—

(A) IN GENERAL.—If the administering Secretaries find, based on paragraph (1), that the expenditures under the medicare program under this title increased (or are expected to increase) during a fiscal year because of the program, the administering Secretaries shall take such steps as may be needed—

(i) to recoup for the medicare program the amount of such increase in expenditures; and

(ii) to prevent any such increase in the future.

---

[1] Subject to the conditional effective date referred to in the first footnote to this section, subsection (c)(3) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654–177) would amend subsection (i)(4) as follows:

(3) Subsection (i)(4) of such section is amended to read as follows:

"(4) CAP ON AMOUNT.—The maximum aggregate expenditures from the trust funds under this subsection pursuant to the agreement entered into between the administering Secretaries under subsection (b) for a fiscal year (before fiscal year 2006) shall not exceed the amount agreed by the Secretaries to be the amount that would have been expended from the trust funds on beneficiaries who enroll in the program, had the program not been established, plus the following:

"(A) $35,000,000 for fiscal year 2002.
"(B) $55,000,000 for fiscal year 2003.
"(C) $75,000,000 for fiscal year 2004.
"(D) $100,000,000 for fiscal year 2005.".

(B) STEPS.—Such steps—

(i) under subparagraph (A)(i) shall include payment of the amount of such increased expenditures by the Secretary of Defense from the current medical care appropriation of the Department of Defense to the trust funds; and

(ii) under subparagraph (A)(ii) shall include suspending or terminating the program (in whole or in part) or lowering the amount of payment under subsection (i)(1).

(k) EVALUATION AND REPORTS.—

(1) INDEPENDENT EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the program, and shall submit annual reports on the program to the administering Secretaries and to the committees of jurisdiction in the Congress. The first report shall be submitted not later than 12 months after the date on which the program begins operation, and the final report not later than 3½ years after that date. The evaluation and reports shall include an assessment, based on the agreement entered into under subsection (b), of the following:

(A) Any savings or costs to the medicare program under this title resulting from the program.

(B) The cost to the Department of Defense of providing care to medicare-eligible military retirees and dependents under the program.

(C) A description of the effects of the program on military treatment facility readiness and training and the probable effects of the program on overall Department of Defense medical readiness and training.

(D) Any impact of the program on access to care for active duty military personnel and their dependents.

(E) An analysis of how the program affects the overall accessibility of the uniformed services treatment system and the amount of space available for point-of-service care, and a description of the unintended effects (if any) upon the normal treatment priority system.

(F) Compliance by the Department of Defense with the requirements under this title.

(G) The number of medicare-eligible military retirees and dependents opting to participate in the program instead of receiving health benefits through another health insurance plan (including benefits under this title).

(H) A list of the health insurance plans and programs that were the primary payers for medicare-eligible military retirees and dependents during the year prior to their participation in the program and the distribution of their previous enrollment in such plans and programs.

(I) Any impact of the program on private health care providers and beneficiaries under this title that are not enrolled in the program.

(J) An assessment of the access to care and quality of care for medicare-eligible military retirees and dependents under the program.

(K) An analysis of whether, and in what manner, easier access to the uniformed services treatment system affects the number of medicare-eligible military retirees and dependents receiving medicare health care services.

(L) Any impact of the program on the access to care for medicare-eligible military retirees and dependents who did not enroll in the program and for other individuals entitled to benefits under this title.

(M) A description of the difficulties (if any) experienced by the Department of Defense in managing the program and TRICARE contracts.

(N) Any additional elements specified in the agreement entered into under subsection (b).

(O) Any additional elements that the Comptroller General of the United States determines is appropriate to assess regarding the program.

(2) REPORT ON EXTENSION AND EXPANSION OF PROGRAM.—Not later than 6 months after the date of the submission of the final report by the Comptroller General of the United States under paragraph (1), the administering Secretaries shall submit to Congress a report containing their recommendation as to— [1]

(A) whether there is a cost to the health care program under this title in conducting the program, and whether the program could be expanded without there being a cost to such health care program or to the Federal Government;

(B) whether to extend the program or make the program permanent; and

(C) whether the terms and conditions of the program should be continued (or modified) if the program is extended or expanded.

---

[1] Subject to the conditional effective date referred to in the first footnote to this section, subsection (e) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–178) would amend subsection (k)(2) as follows:

(e) CHANGE IN REPORTS.—Paragraph (2) of subsection (k) of such section 1896 is amended to read as follows:

"(2) REPORTS ON PROGRAM OPERATION AND CHANGES.—

"(A) ANNUAL REPORT.—The administering Secretaries shall submit to the Committees on Armed Services and Finance of the Senate and the Committees on Armed Services and Ways and Means of the House of Representatives an annual report on the program and its impact on costs and the provision of health services under this title and title 10, United States Code.

"(B) BEFORE MAKING CERTAIN PROGRAM CHANGES.—The administering Secretaries shall submit to such Committees a report at least 60 days before—

"(i) changing the designation of a site under subsection (b)(2);

"(ii) applying comparable requirements under subsection (d)(2);

"(iii) making significant changes in payment methodology or amounts under subsection (i)(4);

"(iv) making other significant changes in the operation of the program; or

"(v) terminating the agreement under the second sentence of subsection (b)(4).

"(C) EXPLANATION.—Each report under subparagraph (B) shall include justifications for the changes or termination to which the report refers.".

7. RESTRICTIONS ON THE USE OF HUMAN SUBJECTS FOR TESTING OF CHEMICAL OR BIOLOGICAL AGENTS

(Section 1078 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 50 U.S.C. 1520a))

SEC. 1078. [50 U.S.C. 1520a] RESTRICTIONS ON THE USE OF HUMAN SUBJECTS FOR TESTING OF CHEMICAL OR BIOLOGICAL AGENTS.

(a) PROHIBITED ACTIVITIES.—The Secretary of Defense may not conduct (directly or by contract)—

(1) any test or experiment involving the use of a chemical agent or biological agent on a civilian population; or

(2) any other testing of a chemical agent or biological agent on human subjects.

(b) EXCEPTIONS.—Subject to subsections (c), (d), and (e), the prohibition in subsection (a) does not apply to a test or experiment carried out for any of the following purposes:

(1) Any peaceful purpose that is related to a medical, therapeutic, pharmaceutical, agricultural, industrial, or research activity.

(2) Any purpose that is directly related to protection against toxic chemicals or biological weapons and agents.

(3) Any law enforcement purpose, including any purpose related to riot control.

(c) INFORMED CONSENT REQUIRED.—The Secretary of Defense may conduct a test or experiment described in subsection (b) only if informed consent to the testing was obtained from each human subject in advance of the testing on that subject.

(d) PRIOR NOTICE TO CONGRESS.—Not later than 30 days after the date of final approval within the Department of Defense of plans for any experiment or study to be conducted by the Department of Defense (whether directly or under contract) involving the use of human subjects for the testing of a chemical agent or a biological agent, 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 setting forth a full accounting of those plans, and the experiment or study may then be conducted only after the end of the 30-day period beginning on the date such report is received by those committees.

(e) BIOLOGICAL AGENT DEFINED.—In this section, the term "biological agent" means any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) deterioration of food, water, equipment, supplies, or materials of any kind; or

(3) deleterious alteration of the environment.

(f) REPORT AND CERTIFICATION.—[Omitted Amendment]

(g) REPEAL OF SUPERSEDED PROVISION OF LAW.—[Omitted Amendment]

8. MISCELLANEOUS HEALTH CARE MATTERS

---

a. Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398, approved Oct. 30, 2000)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 702. [10 U.S.C. 1092 note] CHIROPRACTIC HEALTH CARE FOR MEMBERS ON ACTIVE DUTY.

(a) PLAN REQUIRED.—(1) Not later than March 31, 2001, the Secretary of Defense shall complete development of a plan to provide chiropractic health care services and benefits, as a permanent part of the Defense Health Program (including the TRICARE program), for all members of the uniformed services who are entitled to care under section 1074(a) of title 10, United States Code.

(2) The plan shall provide for the following:

(A) Access, at designated military medical treatment facilities, to the scope of chiropractic services as determined by the Secretary, which includes, at a minimum, care for neuro-musculoskeletal conditions typical among military personnel on active duty.

(B) A detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system.

(C) An examination of the proposed military medical treatment facilities at which such services would be provided.

(D) An examination of the military readiness requirements for chiropractors who would provide such services.

(E) An examination of any other relevant factors that the Secretary considers appropriate.

(F) Phased-in implementation of the plan over a 5-year period, beginning on October 1, 2001.

(b) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall consult with the other administering Secretaries described in section 1073 of title 10, United States Code, and the oversight advisory committee established under section 731 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1092 note) regarding the following:

(1) The development and implementation of the plan required under subsection (a).

(2) Each report that the Secretary is required to submit to Congress regarding the plan.

(3) The selection of the military medical treatment facilities at which the chiropractic services described in subsection (a)(2)(A) are to be provided.

(c) CONTINUATION OF CURRENT SERVICES.—Until the plan required under subsection (a) is implemented, the Secretary shall continue to furnish the same level of chiropractic health care services and benefits under the Defense Health Program that is provided during fiscal year 2000 at military medical treatment facilities that provide such services and benefits.

(d) REPORT REQUIRED.—Not later than January 31, 2001, the Secretary of Defense shall submit a report on the plan required under subsection (a), together with appropriate appendices and attachments, to the Committees on Armed Services of the Senate and the House of Representatives.

(e) GAO REPORTS.—The Comptroller General shall monitor the development and implementation of the plan required under subsection (a), including the administration of services and benefits under the plan, and periodically submit to the committees referred to in subsection (d) written reports on such development and implementation.

* * * * * * *

Subtitle D—Demonstration Projects

SEC. 731. [10 U.S.C. 1092 note] DEMONSTRATION PROJECT FOR EXPANDED ACCESS TO MENTAL HEALTH COUNSELORS.

(a) REQUIREMENT TO CONDUCT DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project under which licensed and certified professional mental health counselors who meet eligibility requirements for participation as providers under the Civilian Health and Medical Program of the Uniformed Services (hereafter in this section referred to as "CHAMPUS") or the TRICARE program may provide services to covered beneficiaries under chapter 55 of title 10, United States Code, without referral by physicians or adherence to supervision requirements.

(b) DURATION AND LOCATION OF PROJECT.—The Secretary shall conduct the demonstration project required by subsection (a)—

(1) during the 2-year period beginning October 1, 2001; and

(2) in one established TRICARE region.

(c) REGULATIONS.—The Secretary shall prescribe regulations regarding participation in the demonstration project required by subsection (a).

(d) PLAN FOR PROJECT.—Not later than March 31, 2001, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to carry out the demonstration project. The plan shall include, but not be limited to, a description of the following:

(1) The TRICARE region in which the project will be conducted.

(2) The estimated funds required to carry out the demonstration project.

(3) The criteria for determining which professional mental health counselors will be authorized to participate under the demonstration project.

(4) The plan of action, including critical milestone dates, for carrying out the demonstration project.

(e) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the demonstration project carried out under this section. The report shall include the following:

(1) A description of the extent to which expenditures for reimbursement of licensed or certified professional mental health counselors change as a result of allowing the independent practice of such counselors.

(2) Data on utilization and reimbursement regarding non-physician mental health professionals other than licensed or certified professional mental health counselors under CHAMPUS and the TRICARE program.

(3) Data on utilization and reimbursement regarding physicians who make referrals to, and supervise, mental health counselors.

(4) A description of the administrative costs incurred as a result of the requirement for documentation of referral to mental health counselors and supervision activities for such counselors.

(5) For each of the categories described in paragraphs (1) through (4), a comparison of data for a 1-year period for the area in which the demonstration project is being implemented with corresponding data for a similar area in which the demonstration project is not being implemented.

(6) A description of the ways in which allowing for independent reimbursement of licensed or certified professional mental health counselors affects the confidentiality of mental health and substance abuse services for covered beneficiaries under CHAMPUS and the TRICARE program.

(7) A description of the effect, if any, of changing reimbursement policies on the health and treatment of covered beneficiaries under CHAMPUS and the TRICARE program, including a comparison of the treatment outcomes of covered beneficiaries who receive mental health services from licensed or certified professional mental health counselors acting under physician referral and supervision, other non-physician mental health providers recognized under CHAMPUS and the TRICARE program, and physicians, with treatment outcomes under the demonstration project allowing independent practice of professional counselors on the same basis as other non-physician mental health providers.

(8) The effect of policies of the Department of Defense on the willingness of licensed or certified professional mental health counselors to participate as health care providers in CHAMPUS and the TRICARE program.

(9) Any policy requests or recommendations regarding mental health counselors made by health care plans and managed care organizations participating in CHAMPUS or the TRICARE program.

SEC. 732. [10 U.S.C. 1092 note] TELERADIOLOGY DEMONSTRATION PROJECT.

(a) AUTHORITY TO CONDUCT PROJECT.—(1) The Secretary of Defense may conduct a demonstration project for the purposes of increasing efficiency of operations with respect to teleradiology at military medical treatment facilities, supporting remote clinics, and increasing coordination with respect to teleradiology between such facilities and clinics. Under the project, a military medical treatment facility and each clinic supported by such facility shall be linked by a digital radiology network through which digital radiology X-rays may be sent electronically from clinics to the military medical treatment facility.

(2) The demonstration project may be conducted at several multispecialty tertiary-care military medical treatment facilities affiliated with a university medical school. One of such facilities shall be supported by at least 5 geographically dispersed remote clinics of the Departments of the Army, Navy, and Air Force, and clinics of the Department of Veterans Affairs and the Coast Guard. Another of such facilities shall be in an underserved rural geographic region served under established telemedicine contracts between the Department of Defense, the Department of Veterans Affairs, and a local university.

(b) DURATION OF PROJECT.—The Secretary shall conduct the project during the 2-year period beginning on the date of the enactment of this Act.

SEC. 733. [10 U.S.C. 1071 note] HEALTH CARE MANAGEMENT DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a demonstration program on health care management to explore opportunities for improving the planning, programming, budgeting systems, and management of the Department of Defense health care system.

(b) TEST MODELS.—Under the demonstration program, the Secretary shall test the use of the following planning and management models:

(1) A health care simulation model for studying alternative delivery policies, processes, organizations, and technologies.

(2) A health care simulation model for studying long term disease management.

(c) DEMONSTRATION SITES.—The Secretary shall test each model separately at one or more sites.

(d) PERIOD FOR PROGRAM.—The demonstration program shall begin not later than 180 days after the date of the enactment of this Act and shall terminate on December 31, 2001.

(e) REPORTS.—The Secretary of Defense shall submit a report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than March 15, 2002. The report shall include the Secretary's assessment of the value of incorporating the use of the tested planning and management models throughout the planning, programming, budgeting systems, and management of the Department of Defense health care system.

(f) FUNDING.—Of the amount authorized to be appropriated under section 301(22), $6,000,000 shall be available for the demonstration program under this section.

* * * * * * *

Subtitle F—Other Matters

* * * * * * *

SEC. 754. [10 U.S.C. 1071 note] PATIENT CARE REPORTING AND MANAGEMENT SYSTEM.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a patient care error reporting and management system.

(b) PURPOSES OF SYSTEM.—The purposes of the system are as follows:

(1) To study the occurrences of errors in the patient care provided under chapter 55 of title 10, United States Code.

(2) To identify the systemic factors that are associated with such occurrences.

(3) To provide for action to be taken to correct the identified systemic factors.

(c) REQUIREMENTS FOR SYSTEM.—The patient care error reporting and management system shall include the following:

(1) A hospital-level patient safety center, within the quality assurance department of each health care organization of the Department of Defense, to collect, assess, and report on the nature and frequency of errors related to patient care.

(2) For each health care organization of the Department of Defense and for the entire Defense health program, patient safety standards that are necessary for the development of a full understanding of patient safety issues in each such organization and the entire program, including the nature and types of errors and the systemic causes of the errors.

(3) Establishment of a Department of Defense Patient Safety Center within the Armed Forces Institute of Pathology, which shall have the following missions:

(A) To analyze information on patient care errors that is submitted to the Center by each military health care organization.

(B) To develop action plans for addressing patterns of patient care errors.

(C) To execute those action plans to mitigate and control errors in patient care with a goal of ensuring that the health care organizations of the Department of Defense provide highly reliable patient care with virtually no error.

(D) To provide, through the Assistant Secretary of Defense for Health Affairs, to the Agency for Healthcare Research and Quality of the Department of Health and Human Services any reports that the Assistant Secretary determines appropriate.

(E) To review and integrate processes for reducing errors associated with patient care and for enhancing patient safety.

(F) To contract with a qualified and objective external organization to manage the national patient safety database of the Department of Defense.

(d) MEDTEAMS PROGRAM.—The Secretary shall expand the health care team coordination program to integrate that program into all Department of Defense health care operations. In carrying out this subsection, the Secretary shall take the following actions:

(1) Establish not less than two Centers of Excellence for the development, validation, proliferation, and sustainment of the health care team coordination program, one of which shall support all fixed military health care organizations, the other of which shall support all combat casualty care organizations.

(2) Deploy the program to all fixed and combat casualty care organizations of each of the Armed Forces, at the rate of not less than 10 organizations in each fiscal year.

(3) Expand the scope of the health care team coordination program from a focus on emergency department care to a coverage that includes care in all major medical specialties, at the rate of not less than one specialty in each fiscal year.

(4) Continue research and development investments to improve communication, coordination, and team work in the provision of health care.

(e) CONSULTATION.—The Secretary shall consult with the other administering Secretaries (as defined in section 1072(3) of title 10, United States Code) in carrying out this section.

---

b. National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 703. [10 U.S.C. 1077 note] PROVISION OF DOMICILIARY AND CUSTODIAL CARE FOR CERTAIN CHAMPUS BENEFICIARIES.

(a) CONTINUATION OF CARE.—(1) The Secretary of Defense may, in any case in which the Secretary makes the determination described in paragraph (2), continue to provide payment under the Civilian Health and Medical Program of the Uniformed Services (as defined in section 1072 of title 10, United States Code), for domiciliary or custodial care services provided to an eligible beneficiary that would otherwise be excluded from coverage under regulations implementing section 1077(b)(1) of such title or by the prohibition in section 1086(d)(1) of such title.

(2) A determination under this paragraph is a determination that discontinuation of payment for domiciliary or custodial care services or transition to provision of care under the individual case management program authorized by section 1079(a)(17) of such title would be—

(A) inadequate to meet the needs of the eligible beneficiary; and

(B) unjust to such beneficiary.

(3) As used in this section, the term "eligible beneficiary" means a covered beneficiary (as that term is defined in section

1072 of title 10, United States Code) who, before the effective date of final regulations to implement the individual case management program authorized by section 1079(a)(17) of such title, were provided domiciliary or custodial care services for which the Secretary provided payment.

(4) The Secretary may provide payment for domiciliary or custodial care services provided to an eligible beneficiary for which payment was discontinued by reason of section 1086(d) of title 10, United States Code, and subsequently reestablished under other legal authority. Such payment is authorized for the period beginning on the date of discontinuation of payment for domiciliary or custodial care services and ending on the date of reestablishment of payment for such services.

(b) PROHIBITION ON ESTABLISHMENT OF LIMITED TRANSITION PERIOD.—The Secretary of Defense shall not place a time limit on the period during which the custodial care exclusions of the Department of Defense may be waived as part of the case management program of the Department.

(c) SURVEY OF CASE MANAGEMENT AND CUSTODIAL CARE POLICIES.—The Secretary of Defense shall conduct a survey of federally funded and State funded programs for the medical care and management of persons whose care is considered to be custodial in nature. The survey shall examine, but shall not be limited to—

(1) a comparison of the case management program of the Department of Defense with similar Federal and State programs; and

(2) a comparison between the case management program of the Department of Defense and the case management and custodial care coverage offered by at least 10 of the most subscribed private health insurance plans in the Federal Employees Health Benefits Program (at least 5 of which shall be managed care organizations), as determined in consultation with the Office of Personnel Management.

(d) REPORT ON SURVEY OF CASE MANAGEMENT AND CUSTODIAL CARE POLICIES.—Not later than March 31, 2000, the Secretary shall submit a report on the survey required by subsection (c) to Congress. The Secretary shall include in the report any recommendations for legislative changes that the Secretary determines necessary to facilitate the case management of the Department of Defense, and a plan for any regulatory changes determined necessary by the Secretary. Such plan shall include any regulatory provisions that the Secretary determines necessary to address equitably the unique needs of the family members of active duty military personnel and to ensure the full integration of the case management program of the Department of Defense with other available family support services activities.

(e) COST LIMITATION.—The total amount paid for services for eligible beneficiaries under subsection (a) for a fiscal year (together with the costs of administering the authority under that subsection) shall be included in the expenditures limited by section 1079(a)(17)(B) of title 10, United States Code.

* * * * * * *

SEC. 706. [10 U.S.C. 1074 note] HEALTH CARE AT FORMER UNIFORMED SERVICES TREATMENT FACILITIES FOR ACTIVE DUTY MEMBERS STATIONED AT CERTAIN REMOTE LOCATIONS.

(a) AUTHORITY.—Health care may be furnished by a designated provider pursuant to any contract entered into by the designated provider under section 722(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 1073 note) to eligible members who reside within the service area of the designated provider.

(b) ELIGIBILITY.—A member of the uniformed services (as defined in section 1072(1) of title 10, United States Code) is eligible for health care under subsection (a) if the member is a member described in section 731(c) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1811; 10 U.S.C. 1074 note).

(c) APPLICABLE POLICIES.—In furnishing health care to an eligible member under subsection (a), a designated provider shall adhere to the Department of Defense policies applicable to the furnishing of care under the TRICARE Prime Remote program, including coordinating with uniformed services medical authorities for hospitalizations and all referrals for specialty care.

(d) REIMBURSEMENT RATES.—The Secretary of Defense, in consultation with the designated providers, shall prescribe reimbursement rates for care furnished to eligible members under subsection (a). The rates prescribed for health care may not exceed the amounts allowable under the TRICARE Standard plan for the same care.

* * * * * * *

SEC. 723. [10 U.S.C. 1071 note] HEALTH CARE QUALITY INFORMATION AND TECHNOLOGY ENHANCEMENT.

(a) PURPOSE.—The purpose of this section is to ensure that the Department of Defense addresses issues of medical quality surveillance and implements solutions for those issues in a timely manner that is consistent with national policy and industry standards.

(b) DEPARTMENT OF DEFENSE PROGRAM FOR MEDICAL INFORMATICS AND DATA.—The Secretary of Defense shall establish a Department of Defense program, the purposes of which shall be the following:

(1) To develop parameters for assessing the quality of health care information.

(2) To develop the defense digital patient record.

(3) To develop a repository for data on quality of health care.

(4) To develop capability for conducting research on quality of health care.

(5) To conduct research on matters of quality of health care.

(6) To develop decision support tools for health care providers.

(7) To refine medical performance report cards.

(8) To conduct educational programs on medical informatics to meet identified needs.

(c) AUTOMATION AND CAPTURE OF CLINICAL DATA.—(1) Through the program established under subsection (b), the Secretary of De-

fense shall accelerate the efforts of the Department of Defense to automate, capture, and exchange controlled clinical data and present providers with clinical guidance using a personal information carrier, clinical lexicon, or digital patient record.

(2) The program shall serve as a primary resource for the Department of Defense for matters concerning the capture, processing, and dissemination of data on health care quality.

(d) MEDICAL INFORMATICS ADVISORY COMMITTEE.—(1) The Secretary of Defense shall establish a Medical Informatics Advisory Committee (hereinafter referred to as the "Committee"), the members of which shall be the following:

(A) The Assistant Secretary of Defense for Health Affairs.

(B) The Director of the TRICARE Management Activity of the Department of Defense.

(C) The Surgeon General of the Army.

(D) The Surgeon General of the Navy.

(E) The Surgeon General of the Air Force.

(F) Representatives of the Department of Veterans Affairs, designated by the Secretary of Veterans Affairs.

(G) Representatives of the Department of Health and Human Services, designated by the Secretary of Health and Human Services.

(H) Any additional members appointed by the Secretary of Defense to represent health care insurers and managed care organizations, academic health institutions, health care providers (including representatives of physicians and representatives of hospitals), and accreditors of health care plans and organizations.

(2) The primary mission of the Committee shall be to advise the Secretary on the development, deployment, and maintenance of health care informatics systems that allow for the collection, exchange, and processing of health care quality information for the Department of Defense in coordination with other Federal departments and agencies and with the private sector.

(3) Specific areas of responsibility of the Committee shall include advising the Secretary on the following:

(A) The ability of the medical informatics systems at the Department of Defense and Department of Veterans Affairs to monitor, evaluate, and improve the quality of care provided to beneficiaries.

(B) The coordination of key components of medical informatics systems, including digital patient records, both within the Federal Government and between the Federal Government and the private sector.

(C) The development of operational capabilities for executive information systems and clinical decision support systems within the Department of Defense and Department of Veterans Affairs.

(D) Standardization of processes used to collect, evaluate, and disseminate health care quality information.

(E) Refinement of methodologies by which the quality of health care provided within the Department of Defense and Department of Veterans Affairs is evaluated.

(F) Protecting the confidentiality of personal health information.

(4) The Assistant Secretary of Defense for Health Affairs shall consult with the Committee on the issues described in paragraph (3).

(5) The Secretary of Defense shall submit to Congress an annual report on medical informatics. The report shall include a discussion of the following matters:

(A) The activities of the Committee.

(B) The coordination of development, deployment, and maintenance of health care informatics systems within the Federal Government, and between the Federal Government and the private sector.

(C) The progress or growth occurring in medical informatics.

(D) How the TRICARE program and the Department of Veterans Affairs health care system can use the advancement of knowledge in medical informatics to raise the standards of health care and treatment and the expectations for improving health care and treatment.

(6) Members of the Committee shall not be paid by reason of their service on the Committee.

(7) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

(e) ANNUAL REPORT.—The Assistant Secretary of Defense for Health Affairs shall submit to Congress on an annual basis a report on the quality of health care furnished under the health care programs of the Department of Defense. The report shall cover the most recent fiscal year ending before the date the report is submitted and shall contain a discussion of the quality of the health care measured on the basis of each statistical and customer satisfaction factor that the Assistant Secretary determines appropriate, including, at a minimum, a discussion of the following:

(1) Health outcomes.

(2) The extent of use of health report cards.

(3) The extent of use of standard clinical pathways.

(4) The extent of use of innovative processes for surveillance.

---

c. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 733. PROVISION OF HEALTH CARE AT MILITARY ENTRANCE PROCESSING STATIONS AND ELSEWHERE OUTSIDE MEDICAL TREATMENT FACILITIES.

(a) [Omitted—Amendment]

(b) [10 U.S.C. 1091 note] TEST OF ALTERNATIVE PROCESS FOR CONDUCTING MEDICAL SCREENINGS FOR ENLISTMENT QUALIFICATION.—(1) The Secretary of Defense shall conduct a test to—

(A) determine whether the use of an alternative to the system currently used by the Department of Defense of employing fee-basis physicians for determining the medical qualifications for enlistment of applicants for military service would reduce the number of disqualifying medical conditions that are detected during the initial entry training of such applicants;

(B) determine whether any savings or cost avoidance may be achieved through use of an alternative system as a result of any increased detection of disqualifying medical conditions before entry by applicants into initial entry training; and

(C) compare the capability of an alternative system to meet or exceed the cost, responsiveness, and timeliness standards of the system currently used by the Department.

(2) The alternative system described in paragraph (1) may include the system used under the TRICARE system, the health-care system of the Department of Veterans Affairs, or any other system, or combination of systems, considered appropriate by the Secretary.

(3) Not later than March 1, 2000, the Secretary shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the results and findings of the test conducted under paragraph (1).

* * * * * * *

SEC. 742. AUTHORIZATION TO ESTABLISH A TRAUMA TRAINING CENTER.

The Secretary of the Army is hereby authorized to establish a Trauma Training Center in order to provide the Army with a trauma center capable of training forward surgical teams.

---

d. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 731. [10 U.S.C. 1074 note] IMPROVEMENTS IN HEALTH CARE COVERAGE AND ACCESS FOR MEMBERS ASSIGNED TO CERTAIN DUTY LOCATIONS FAR FROM SOURCES OF CARE.

(a) [Omitted-Amendment]

(b) TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS.—(1) A member of the uniformed services [1] described in subsection (c) is

[1] Subsection (a)(2) of section 722 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; October 30, 2000; 114 Stat. 1654A–185) amended subsections (b), (c), and (d)(3) of section 731 by striking "Armed Forces" and inserting "uniformed services". It also added a new paragraph (4) at the end of subsection (b) and a new paragraph (3) at the end of subsection (f). Subsection (b)(2) of such section 722 added the second sentence to subsection (b)(1) and made a conforming change in subsection (b)(2). However, subsection (c)(2) of such section 722 provides as follows:

(2) The amendments made by subsection (a)(2), with respect to members of the uniformed services, and the amendments made by subsection (b)(2), with respect to dependents of members, shall take effect on the date of the enactment of this Act and shall expire with respect to a member or the dependents of a member, respectively, on the later of the following:

(A) The date that is one year after the date of the enactment of this Act.

entitled to receive care under the Civilian Health and Medical Program of the Uniformed Services. In connection with such care, the Secretary of Defense shall waive the obligation of the member to pay a deductible, copayment, or annual fee that would otherwise be applicable under that program for care provided to the members under the program. A dependent of the member, as described in subparagraph (A), (D), or (I) of section 1072(2) of title 10, United States Code, who is residing with the member shall have the same entitlement to care and to waiver of charges as the member.

(2) A member or dependent of the member, as the case may be, who is entitled under paragraph (1) to receive health care services under CHAMPUS shall receive such care from a network provider under the TRICARE program if such a provider is available in the service area of the member.

(3) Paragraph (1) shall take effect on the date of the enactment of this Act and shall expire with respect to a member upon the later of the following: [1]

(A) The date that is one year after the date of the enactment of this Act.

(B) The date on which the amendments made by subsection (a) apply with respect to the coverage of medical care for, and provision of such care to, the member.

(4) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

(c) ELIGIBLE MEMBERS.—A member referred to in subsection (b) is a member of the uniformed services on active duty who—

(1) receives a duty assignment described in subsection (d); and

(2) 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—

(A) the nearest health care facility of the uniformed services adequate to provide the needed care under chapter 55 of title 10, United States Code; and

(B) the nearest source of the needed care that is available to the member under the TRICARE Prime plan.

(d) DUTY ASSIGNMENTS COVERED.—A duty assignment referred to in subsection (c)(1) means any of the following:

(1) Permanent duty as a recruiter.

(2) 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.

(3) Permanent duty as a full-time adviser to a unit of a reserve component of the uniformed services.

(4) Any other permanent duty designated by the Secretary concerned for purposes of this subsection.

(B) The date on which the policies required by the amendments made by subsection (a)(1) or (b)(1) are implemented with respect to the coverage of medical care for and provision of such care to the member or dependents, respectively.

[1] Subsection (c)(3) of section 722 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–186) provides that subsection (b)(3) does not apply with respect to "a member of the Coast Guard, the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the Public Health Service, or to a dependent of a member of a uniformed service".

(e) PAYMENT OF COSTS.—Deductibles, copayments, and annual fees not payable by a member by reason of a waiver granted under the regulations prescribed pursuant to subsection (b) shall be paid out of funds available to the Department of Defense for the Defense Health Program.

(f) DEFINITIONS.—In this section:

(1) The term "TRICARE program" has the meaning given that term in section 1072(7) of title 10, United States Code.

(2) The term "TRICARE Prime plan" means a plan under the TRICARE program that provides for the voluntary enrollment of persons for the receipt of health care services to be furnished in a manner similar to the manner in which health care services are furnished by health maintenance organizations.

(3) The terms "uniformed services" and "administering Secretaries" have the meanings given those terms in section 1072 of title 10, United States Code.

* * * * * * *

SEC. 743. AUTHORITY FOR AGREEMENT FOR USE OF MEDICAL RESOURCE FACILITY, ALAMOGORDO, NEW MEXICO.

(a) AUTHORITY.—(1) The Secretary of the Air Force may enter into an agreement with Gerald Champion Hospital, Alamogordo, New Mexico, under which the Secretary may furnish health care services to eligible individuals in a medical resource facility in Alamogordo, New Mexico, that is constructed and equipped, in part, using funds provided by the Secretary under the agreement.

(2) For purposes of this section:

(A) The term "eligible individual" means any individual eligible for medical and dental care under chapter 55 of title 10, United States Code, including any member of the uniformed services entitled to such care under section 1074(a) of that title.

(B) The terms "medical resource facility" and "facility" mean the medical resource facility to be constructed and equipped pursuant to the agreement authorized by paragraph (1).

(C) The term "Hospital" means Gerald Champion Hospital, Alamogordo, New Mexico.

(b) CONTENT OF AGREEMENT.—Any agreement entered into under subsection (a) shall specify, at a minimum, the following:

(1) The relationship between the Hospital and the Secretary of the Air Force in the provision of health care services to eligible individuals in the medical resource facility, including—

(A) whether or not the Secretary and the Hospital are to use and administer the facility jointly or independently; and

(B) under what circumstances the Hospital is to act as a provider of health care services under the managed care option of the TRICARE program known as TRICARE Prime.

(2) Matters relating to the administration of the agreement, including—

(A) the duration of the agreement;

(B) the rights and obligations of the Secretary and the Hospital under the agreement, including any contracting or grievance procedures applicable under the agreement;

(C) the types of care to be provided to eligible individuals under the agreement, including the cost to the Department of the Air Force of providing the care to eligible individuals during the term of the agreement;

(D) the access of Air Force medical personnel to the facility under the agreement;

(E) the rights and responsibilities of the Secretary and the Hospital upon termination of the agreement; and

(F) any other matters jointly identified by the Secretary and the Hospital.

(3) The nature of the arrangement between the Secretary and the Hospital with respect to the ownership of the facility and any property under the agreement, including—

(A) the nature of that arrangement while the agreement is in force;

(B) the nature of that arrangement upon termination of the agreement; and

(C) any requirement for reimbursement of the Secretary by the Hospital as a result of the arrangement upon termination of the agreement.

(4) The amount of the funds made available under subsection (c) that the Secretary will contribute for the construction and equipping of the facility.

(5) Any conditions or restrictions relating to the construction, equipping, or use of the facility.

(c) AVAILABILITY OF FUNDS FOR CONSTRUCTION AND EQUIPPING OF FACILITY.—(1) Of the amount authorized to be appropriated pursuant to section 301(4) for operation and maintenance for the Air Force, not more than $7,000,000 may be used by the Secretary of the Air Force to make a contribution toward the construction and equipping of the medical resource facility in the event that the Secretary enters into the agreement authorized by subsection (a). Notwithstanding any other provision of law, the Secretary may not use other sources of funds to make a contribution toward the construction or equipping of the facility.

(2) Notwithstanding subsection (b)(3) regarding the ownership and reimbursement issues to be addressed in the agreement authorized by subsection (a), the Secretary may not contribute funds made available under paragraph (1) toward the construction and equipping of the facility unless the agreement requires, in exchange for the contribution, that the Hospital provide health care services to eligible individuals without charge to the Secretary or at a reduced rate. The value of the services provided by the Hospital shall be at least equal to the amount of the contribution made by the Secretary, and the Hospital shall complete the provision of services equal in value to the Secretary's contribution within seven years after the facility becomes operational. The provision of additional discounted services to be provided by the Hospital shall be included in the agreement. The value and types of services to be provided by the Hospital shall be negotiated in accordance with

principles of resource-sharing agreements under the TRICARE program.

(d) NOTICE AND WAIT.—The Secretary of the Air Force may not enter into the agreement authorized by subsection (a) until 90 days after the Secretary of Defense submits to the congressional defense committees the report required by subsection (e).

(e) REPORT ON PROPOSED AGREEMENT.—The Secretary of Defense shall submit to Congress a report containing an analysis of, and recommendations regarding, the agreement proposed to be entered into under subsection (a), in particular, the implications of the agreement on regional health care costs and its effect on implementation of the TRICARE program in the region. The report shall also include a copy of the agreement, the results of a cost-benefit analysis conducted by the Secretary of the Air Force with respect to the agreement, and such other information with respect to the agreement as the Secretary of Defense and the Secretary of the Air Force considers appropriate. The cost-benefit analysis shall consider the effects of the agreement on operation and maintenance and military construction requirements at Holloman Air Force Base, New Mexico.

(f) SUBSEQUENT REPORTS.—If the Secretary of the Air Force enters into the agreement authorized by subsection (a), the Secretary shall submit to Congress an annual report containing a revised cost-benefit analysis of the consequences of the agreement as in effect during the year covered by the report, including a full accounting of any cost savings realized by the Department of the Air Force as a result of the agreement. A report shall be submitted for each year in which the agreement is in effect or until the Hospital provides the full value of health care services required under subsection (c)(2), whichever occurs first.

SEC. 744. [10 U.S.C. 1073 note] DISCLOSURES OF CAUTIONARY INFORMATION ON PRESCRIPTION MEDICATIONS.

(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the administering Secretaries referred to in section 1073 of title 10, United States Code, shall prescribe regulations to require each source described in subsection (d) that dispenses a prescription medication to a beneficiary under chapter 55 of such title to include with the medication the written cautionary information required by subsection (b).

(b) INFORMATION TO BE DISCLOSED.—Information required to be disclosed about a medication under the regulations shall include appropriate cautions about usage of the medication, including possible side effects and potentially hazardous interactions with foods.

(c) FORM OF INFORMATION.—The regulations shall require that information be furnished in a form that, to the maximum extent practicable, is easily read and understood.

(d) COVERED SOURCES.—The regulations shall apply to the following:

(1) Pharmacies and any other dispensers of prescription medications in medical facilities of the uniformed services.

(2) Sources of prescription medications under any mail order pharmaceuticals program provided by any of the admin-

istering Secretaries under chapter 55 of title 10, United States Code.

(3) Pharmacies paid under the Civilian Health and Medical Program of the Uniformed Services (including the TRICARE program).

(4) Pharmacies, and any other pharmaceutical dispensers, of designated providers referred to in section 721(5) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).

SEC. 745. [10 U.S.C. 1073 note] COMPETITIVE PROCUREMENT OF CERTAIN OPHTHALMIC SERVICES.

(a) COMPETITIVE PROCUREMENT REQUIRED.—Beginning not later than October 1, 1998, the Secretary of Defense shall competitively procure from private-sector sources, or other sources outside of the Department of Defense, all ophthalmic services related to the provision of single vision and multivision eyeware for members of the Armed Forces, retired members, and certain covered beneficiaries under chapter 55 of title 10, United States Code, who would otherwise receive such ophthalmic services through the Department of Defense.

(b) EXCEPTION.—Subsection (a) shall not apply to the extent that the Secretary of Defense determines that the use of sources within the Department of Defense to provide such ophthalmic services—

(1) is necessary to meet the readiness requirements of the Armed Forces; or

(2) is more cost effective.

(c) COMPLETION OF EXISTING ORDERS.—Subsection (a) shall not apply to orders for ophthalmic services received on or before September 30, 1998.

---

e. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 742. [10 U.S.C. 1071 note] EXTERNAL PEER REVIEW FOR DEFENSE HEALTH PROGRAM EXTRAMURAL MEDICAL RESEARCH INVOLVING HUMAN SUBJECTS.

(a) ESTABLISHMENT OF EXTERNAL PEER REVIEW PROCESS.—The Secretary of Defense shall establish a peer review process that will use persons who are not officers or employees of the Government to review the research protocols of medical research projects.

(b) PEER REVIEW REQUIREMENTS.—Funds of the Department of Defense may not be obligated or expended for any medical research project unless the research protocol for the project has been approved by the external peer review process established under subsection (a).

(c) MEDICAL RESEARCH PROJECT DEFINED.—For purposes of this section, the term "medical research project" means a research project that—

(1) involves the participation of human subjects;

(2) is conducted solely by a non-Federal entity; and

(3) is funded through the Defense Health Program account.

(d) EFFECTIVE DATE.—The peer review requirements of subsection (b) shall take effect on October 1, 1996, and, except as provided in subsection (e), shall apply to all medical research projects proposed funded on or after that date, including medical research projects funded pursuant to any requirement of law enacted before, on, or after that date.

(e) EXCEPTIONS.—Only the following medical research projects shall be exempt from the peer review requirements of subsection (b):

(1) A medical research project that the Secretary determines has been substantially completed by October 1, 1996.

(2) A medical research project funded pursuant to any provision of law enacted on or after that date if the provision of law specifically refers to this section and specifically states that the peer review requirements do not apply.

---

f. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 704. AUTHORIZATION FOR MEDICAL AND DENTAL CARE FOR ABUSED DEPENDENTS OF CERTAIN MEMBERS.

[Subsections (a) and (b) consisted of amendments.]

(c) [10 U.S.C. 1091 note] PERSONAL SERVICE CONTRACTS TO PROVIDE CARE.—(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

* * * * * * *

SEC. 731. [10 U.S.C. 1092 note] CHIROPRACTIC HEALTH CARE.

(a) REQUIREMENT FOR PROGRAM.—(1) Not later than 120 days after the date of enactment of this Act, the Secretary of Defense shall develop and carry out a demonstration program to evaluate the feasibility and advisability of furnishing chiropractic care through the medical care facilities of the Armed Forces. The Sec-

retary of Defense shall develop and carry out the program in consultation with the Secretaries of the military departments.

(2) In carrying out the program, the Secretary of Defense shall—

(A) subject to paragraph (3), designate the National Naval Medical Center, the Walter Reed Army Medical Center, and not less than 11 other major military medical treatment facilities of the Department of Defense to furnish chiropractic care under the program; and

(B) enter into agreements with such number of chiropractors as the Secretary determines sufficient for the purposes of the program to furnish chiropractic care at such facilities under the program.

(3) The Secretary may not designate under paragraph (2) any treatment facility that is located on a military installation scheduled for closure or realignment under a base closure law.

(4) During fiscal year 2000, the Secretary shall continue to furnish the same chiropractic care in the military medical treatment facilities designated pursuant to paragraph (2)(A) as the chiropractic care furnished during the demonstration program.

(b) PROGRAM PERIOD.—The Secretary shall carry out the demonstration program in fiscal years 1995 through 1999.

(c) REPORTING REQUIREMENTS.—(1) Not later than January 30, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program. The report shall—

(A) identify the treatment facilities designated pursuant to subsection (a)(2)(A); and

(B) include a discussion of the plan for the conduct of the program.

(2) Not later than May 1, 1995, the Secretary of Defense shall submit to the committees referred to in paragraph (1) a plan for evaluating the program, including a schedule for conducting progress reviews and for submitting a final report to the committees.

(3) Not later than January 30, 1998, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that identifies the additional treatment facilities designated to furnish chiropractic care under the program that were not so designated before the report required by paragraph (1) was prepared, together with the plan for the conduct of the program at the additional treatment facilities.

(4) Not later than May 1, 1998, the Secretary of Defense shall modify the plan for evaluating the program submitted pursuant to paragraph (2) in order to provide for the evaluation of the program at all of the designated treatment facilities under the program, including the treatment facilities referred to in paragraph (3).

(5) Not later than January 31, 2000, the Secretary shall submit to the committees referred to in paragraph (3) a final report in accordance with the plan submitted pursuant to paragraph (2).

(d) OVERSIGHT ADVISORY COMMITTEE.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall establish an oversight advisory committee to assist

and advise the Secretary with regard to the development and conduct of the demonstration program.

(2) The oversight advisory committee shall include the following members:

(A) The Comptroller General of the United States, or the designee of such person from within the General Accounting Office.

(B) The Assistant Secretary of Defense for Health Affairs, or the designee of such person.

(C) The Surgeons General of the Army, the Air Force, and the Navy, or the designees of such persons.

(D) No fewer than four independent representatives of the chiropractic health care profession, appointed by the Secretary of Defense.

(3) The oversight advisory committee shall assist the Secretary of Defense regarding—

(A) issues involving the professional credentials of the chiropractors participating in the program;

(B) the granting of professional practice privileges for the chiropractors at the treatment facilities participating in the program;

(C) the preparation of the reports required under subsection (c);

(D) the evaluation of the program; and

(E) if the Secretary submits an implementation plan pursuant to subsection (e), the preparation of such plan.

(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee.

(5) The Secretary shall—

(A) make full use of the oversight advisory committee in preparing—

(i) the final report on the demonstration program conducted under this section; and

(ii) the implementation plan described in subsection (e); and

(B) provide opportunities for members of the committee to provide views as part of such final report and plan.

(e) IMPLEMENTATION PLAN.—If the Secretary of Defense recommends in the final report submitted under subsection (c) that chiropractic health care services should be offered in medical care facilities of the Armed Forces or as a health care service covered under the TRICARE program, the Secretary shall, not later than March 31, 2000, submit to the Committees on Armed Services of the House of Representatives and the Senate an implementation plan for the full integration of chiropractic health care services into the military health care system of the Department of Defense, including the TRICARE program. Such implementation plan shall include—

(1) a detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system;

(2) the proposed scope of practice for chiropractors who would provide services to covered beneficiaries under chapter 55 of title 10, United States Code;

(3) the proposed military medical treatment facilities at which such services would be provided;

(4) the military readiness requirements for chiropractors who would provide services to such covered beneficiaries; and

(5) any other relevant factors that the Secretary considers appropriate.

(f) DEFINITION.—For purposes of this section, the term "base closure law" means each of the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) Section 2687 of title 10, United States Code.

---

g. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE VII—HEALTH CARE PROVISIONS

* * * * * * *

SEC. 702. [10 U.S.C. 1079 note] PROGRAMS RELATING TO THE SALE OF PHARMACEUTICALS.

(a) DEMONSTRATION PROJECT FOR PHARMACEUTICALS BY MAIL.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense, in consultation with the administering Secretaries, shall—

(1) establish a demonstration project that permits eligible persons described in subsection (c) to obtain prescription pharmaceuticals by mail in connection with medical care furnished to such persons under chapter 55 of title 10, United States Code; and

(2) conduct the demonstration project in two or more regions selected by the Secretary, each of which consists of two or more States.

(b) RETAIL PHARMACY NETWORK.—To the maximum extent practicable, the Secretary of Defense shall include in each managed health care program initiated, awarded, or renewed by the Secretary after January 1, 1993, a program to supply prescription pharmaceuticals to eligible persons described in subsection (c) through a managed care network of community retail pharmacies in the area covered by the managed health care program.

(c) ELIGIBLE PERSONS.—A person eligible to obtain pharmaceuticals under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b) is any person living in the area covered by the demonstration project or managed health care program—

(1) who is eligible for medical care under a contract for medical care entered into by the Secretary of Defense under section 1079 or 1086 of title 10, United States Code; or

(2) who—

(A) would be eligible for medical care under a contract for medical care entered into under section 1086 of such title except for operation of subsection (d)(1) of such section; and

(B) either—

(i) resides in an area that is adversely affected (as determined by the Secretary) by the closure of a health care facility of the uniformed services as a result of the closure or realignment of the military installation at which such facility is located; or

(ii) can demonstrate to the satisfaction of the Secretary that the person relied upon a health care facility referred to in clause (i) before the closure of the facility to obtain the person's pharmaceuticals.

(d) PHARMACEUTICALS OFFERED; PURCHASE FEES.—(1) The Secretary of Defense, in consultation with the administering Secretaries, shall—

(A) determine the pharmaceuticals that may be obtained by eligible persons under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b); and

(B) establish an appropriate fee, charge, or copayment to be paid by such persons for pharmaceuticals obtained under the demonstration project or managed health care program.

(2) In the case of persons eligible to participate in the demonstration project for pharmaceuticals or the retail pharmacy network by reason of clause (ii) of subsection (c)(2)(B), the Secretary of Defense may increase the fees, charges, and copayments established under paragraph (1)(B) and otherwise applicable to such persons by an amount necessary to cover any additional costs incurred by the administering Secretaries as a result of making pharmaceuticals available to such persons under this section.

(e) REPORT REGARDING DEMONSTRATION PROJECT.—Not later than two years after the establishment of the demonstration project under subsection (a), the Secretary of Defense shall submit to Congress a report—

(1) describing the results of the demonstration project required by subsection (a);

(2) containing such recommendations for revision of the demonstration project as the Secretary considers to be necessary; and

(3) containing a plan (including a schedule) for implementing the demonstration project throughout the United States.

(f) ADDITIONAL REPORT REGARDING PROGRAMS.—Not later than January 1, 1994, the Secretary of Defense shall submit to Congress a report containing—

(1) an evaluation of the feasibility and advisability of increasing the size of those areas determined by the Secretary under subsection (c)(2) to be adversely affected by the closure of a health care facility of the uniformed services in order to increase the number of persons described in such subsection who will be eligible to participate in the demonstration project

for pharmaceuticals by mail or in the retail pharmacy network under this section;

(2) an evaluation of the feasibility and advisability of expanding the demonstration project and the retail pharmacy network under this section to include all covered beneficiaries under chapter 55 of title 10, United States Code, including those persons currently excluded from participation in the Civilian Health and Medical Program of the Uniformed Services by operation of section 1086(d)(1) of such title;

(3) an estimation of the costs that would be incurred, and any savings that would be achieved by improving efficiencies of operation, as a result of undertaking the increase or expansion described in paragraph (1) or (2); and

(4) such recommendations as the Secretary considers to be appropriate.

(g) DEFINITIONS.—In this section, the terms "uniformed services" and "administering Secretaries" have the meanings given those terms in section 1072 of title 10, United States Code.

(h) TERMINATION.—This section shall cease to apply to the Secretary of Defense on the date after the implementation of section 711 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that the Secretary determines appropriate, with a view to minimizing instability with respect to the provision of pharmacy benefits, but in no case later than the date that is one year after the date of the enactment of such Act.

* * * * * * *

SEC. 724. [10 U.S.C. 1071 note] ANNUAL BENEFICIARY SURVEY.

(a) SURVEY REQUIRED.—The administering Secretaries shall conduct annually a formal survey of persons receiving health care under chapter 55 of title 10, United States Code, in order to determine the following:

(1) The availability of health care services to such persons through the health care system provided for under that chapter, the types of services received, and the facilities in which the services were provided.

(2) The familiarity of such persons with the services available under that system and with the facilities in which such services are provided.

(3) The health of such persons.

(4) The level of satisfaction of such persons with that system and the quality of the health care provided through that system.

(5) Such other matters as the administering Secretaries determine appropriate.

(b) EXEMPTION.—An annual survey under subsection (a) shall be treated as not a collection of information for the purposes for which such term is defined in section 3502(4) of title 44, United States Code.

(c) DEFINITION.—For purposes of this section, the term "administering Secretaries" has the meaning given such term in section 1072(3) of title 10, United States Code.

F. BASE CLOSURE AND REALIGNMENT AND REAL PROPERTY ISSUES

1. 1990 BASE REALIGNMENT AND CLOSURE ACT

[Enacted as title XXIX of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510, approved Nov. 5, 1990; 10 U.S.C. 2687 note)]

TITLE XXIX—DEFENSE BASE CLOSURES AND REALIGNMENTS

PART A—DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

SEC. 2901. SHORT TITLE AND PURPOSE

(a) SHORT TITLE.—This part may be cited as the "Defense Base Closure and Realignment Act of 1990".

(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

SEC. 2902. THE COMMISSION

(a) ESTABLISHMENT.—There is established an independent commission to be known as the "Defense Base Closure and Realignment Commission".

(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.

(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

(A) the Speaker of the House of Representatives concerning the appointment of two members;

(B) the majority leader of the Senate concerning the appointment of two members;

(C) the minority leader of the House of Representatives concerning the appointment of one member; and

(D) the minority leader of the Senate concerning the appointment of one member.

(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

(2) The Chairman of the Commission shall serve until the confirmation of a successor.

(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on National Security of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

(A) There may not be more than 15 persons on the staff at any one time.

(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) The Commission may lease space and acquire personal property to the extent funds are available.

(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100–526. Such funds shall remain available until expended.

(3)(A) The Secretary may transfer not more than $300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(l) TERMINATION.—The Commission shall terminate on December 31, 1995.

(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

(A) a description of the assessment referred to in paragraph (1);

(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

(C) a description of the anticipated implementation of such force-structure plan.

(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation

for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

(B) Subparagraph (A) applies to the following persons:

(i) The Secretaries of the military departments.

(ii) The heads of the Defense Agencies.

(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Mem-

bers of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

(i) makes the determination required by subparagraph (B);

(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

(iv) conducts public hearings on the proposed change.

(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

(i) add a military installation to the list of military installations recommended by the Secretary for closure;

(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(5) The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

(2) realign all military installations recommended for realignment by such Commission in each such report;

(3) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

(4) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

SEC. 2905. IMPLEMENTATION

(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

(B) provide—

(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose

funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services—

(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(3)(A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

(i) the local government in whose jurisdiction the installation is wholly located; or

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date of approval of the closure of the installation; or

(IV) ninety days before the date of the closure of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this part as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevel-

opment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property—

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this part to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

(B) The transfer of property of a military installation under subparagraph (A) shall be without consideration if the redevelopment authority with respect to the installation—

(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

(i) Road construction.

(ii) Transportation management facilities.

(iii) Storm and sanitary sewer construction.

(iv) Police and fire protection facilities and other public facilities.

(v) Utility construction.

(vi) Building rehabilitation.

(vii) Historic property preservation.

(viii) Pollution prevention equipment or facilities.

(ix) Demolition.

(x) Disposal of hazardous materials generated by demolition.

(xi) Landscaping, grading, and other site or public improvements.

(xii) Planning for or the marketing of the development and reuse of the installation.

(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

(E)[1] (i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

(iii) A lease under clause (i) may not require rental payments by the United States.

(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

---

[1] Section 2837(b) of the Military Construction Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 560) provides as follows: "Notwithstanding any other provision of law, a department or agency of the Federal Government that enters into a lease of property under [this subparagraph (C)] may improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.".

(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act, with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d).

(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000, at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Gov-

ernment has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act[1] (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

(iii) the Secretary of Health and Human Services—

(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

(II) approves the application under section 501(e) of such Act.

(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

(7) [1](A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph

[1] Section 2(e) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421, approved October 25, 1994) provided that paragraph (7) would apply to an installation approved for closure before October 25, 1994, subject to certain conditions, if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after that date.

(5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

(iii) In providing assistance under clause (ii), a redevelopment authority shall—

(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of in-

terest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

(ii) The date specified under clause (i) shall be—

(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

(II) notify the Secretary of Defense of the date.

(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

(II) An assessment of the need for the program.

(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

(VI) An assessment of the time required in order to commence carrying out the program.

(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the

use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall include in an application under clause (i) the following:

(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the

expressed interest and requests of representatives of the homeless—

(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

(I) an explanation of that determination; and

(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

(I) revise the plan in order to address the determination; and

(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or

notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(III) request that each such representative submit to that Secretary the items described in clause (ii); and

(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

(I) A description of the program of such representative to assist the homeless.

(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall—

(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of

Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

(O) For purposes of this paragraph, the term "communities in the vicinity of the installation", in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

(P) For purposes of this paragraph, the term "other interested parties", in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

(iii) military installations alternative to those recommended or selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act

or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

(2) sections 2662 and 2687 of title 10, United States Code.

(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.

(f) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.—(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this part with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as property essential to the reuse or redevelopment of the installation.

(2) A transfer of real property or facilities may be made under paragraph (1) only if—

(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

(3) Notwithstanding paragraph (2) of section 2906(a), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

(4) The Secretary shall submit to the congressional defense committees a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 30-day period beginning on the date the congressional defense committees receive the report regarding the agreement.

(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

(g) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manu-

factured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

SEC. 2906. ACCOUNT

(a) IN GENERAL.—(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account 1990" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part; and

(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under 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 Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2).

(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note). After July 13, 2001, the Account shall be the sole source of Federal funds for environmental restoration, property management, and other caretaker costs associated with any real property

at military installations closed or realigned under this part or such title II.

(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(c) REPORTS.—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of 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 other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this part; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under

section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) As used in this subsection:

(A) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(B) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(C) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

SEC. 2907. REPORTS

As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress—

(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term "joint resolution" means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———", the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.".

(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on National Security of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution

shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on the date of the enactment of this Act and ending on December 31, 1995, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

(1) closures and realignments under title II of Public Law 100–526; and

(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

SEC. 2910. DEFINITIONS

As used in this part:

(1) The term "Account" means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term "Commission" means the Commission established by section 2902.

(4) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

(5) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term "Secretary" means the Secretary of Defense.

(7) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam,

the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

(9) The term "redevelopment authority", in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

(10) The term "redevelopment plan" in the case of an installation to be closed under this part, means a plan that—

(A) is agreed to by the local redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

(11) The term "representative of the homeless" has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act [1] (42 U.S.C. 11411(i)(4)).

SEC. 2911. CLARIFYING AMENDMENT

[Omitted]

Part B—Other Provisions Relating to Defense Base Closures and Realignments

SEC. 2921. [10 U.S.C. 2687 note] CLOSURE OF FOREIGN MILITARY INSTALLATIONS

(a) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the termination of military operations by the United States at military installations outside the United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

(3) the Secretary of Defense, acting through the military component commands or the sub-unified commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.

(b) RESIDUAL VALUE.—(1) For each installation outside the United States at which military operations were being carried out by the United States on October 1, 1990, the Secretary of Defense shall transmit, by no later than June 1, 1991, an estimate of the fair market value, as of January 1, 1991, of the improvements made by the United States at facilities at each such installation.

(2) For purposes of this section:

(A) The term "fair market value of the improvements" means the value of improvements determined by the Secretary on the basis of their highest use.

(B) The term "improvements" includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(c) ESTABLISHMENT OF SPECIAL ACCOUNT.—(1) There is established on the books of the Treasury a special account to be known as the "Department of Defense Overseas Military Facility Investment Recovery Account". Except as provided in subsection (d), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into such account.

(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

(A) facility maintenance and repair and environmental restoration at military installations in the United States; and

(B) facility maintenance and repair and compliance with applicable environmental laws at military installations outside the United States that the Secretary anticipates will be occupied by the Armed Forces for a long period.

(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

(d) AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) In the case of a payment referred to in subsection (c)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation

Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

(2) As used in this subsection:

(A) The term "nonappropriated funds" means funds received from—

(i) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code; or

(ii) a nonappropriated fund instrumentality.

(B) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(e) NEGOTIATIONS FOR PAYMENTS-IN-KIND.—(1) Before the Secretary of Defense enters into negotiations with a host country regarding the acceptance by the United States of any payment-in-kind in connection with the release to the host country of improvements made by the United States at military installations in the host country, the Secretary shall submit to the appropriate congressional committees a written notice regarding the intended negotiations.

(2) The notice shall contain the following:

(A) A justification for entering into negotiations for payments-in-kind with the host country.

(B) The types of benefit options to be pursued by the Secretary in the negotiations.

(C) A discussion of the adjustments that are intended to be made in the future-years defense program or in the budget of the Department of Defense for the fiscal year in which the notice is submitted or the following fiscal year in order to reflect costs that it may no longer be necessary for the United States to incur as a result of the payments-in-kind to be sought in the negotiations.

(3) For purposes of this subsection, the appropriate congressional committees are—

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

(B) the Committee on Armed Services, the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

(f) OMB REVIEW OF PROPOSED SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of

$10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

(2) Each year, the Secretary 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 each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the value of the improvements to be released pursuant to the proposed agreement did not exceed $10,000,000.

(g) CONGRESSIONAL OVERSIGHT OF PAYMENTS-IN-KIND.—(1) Not less than 30 days before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of the military construction project or facility improvement project, as the case may be.

(B) A certification that the project is needed by United States forces.

(C) An explanation of how the project will aid in the achievement of the mission of those forces.

(D) A certification that, if the project were to be carried out by the Department of Defense, appropriations would be necessary for the project and it would be necessary to provide for the project in the next future-years defense program.

(2) Not less than 30 days before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of each activity to be covered by the payment-in-kind.

(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments.

(C) A certification that, unless the payment-in-kind is accepted or funds are appropriated for payment of such costs, the military mission of the United States forces with respect to the host nation concerned will be adversely affected.

SEC. 2922. MODIFICATION OF THE CONTENT OF BIANNUAL REPORT OF THE COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

[Omitted—Amendments**]**

SEC. 2923. FUNDING FOR ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS SCHEDULED FOR CLOSURE INSIDE THE UNITED STATES

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense Base Closure Account for fiscal year 1991, in addition to any other funds authorized to be appropriated to that account for that fiscal year, the sum of $100,000,000. Amounts appropriated to that account pursuant to the preceding sentence shall be available only for activities for the purpose of environmental restoration at military installations closed or realigned under title II of Public Law 100–526, as authorized under section 204(a)(3) of that title.

(b) EXCLUSIVE SOURCE OF FUNDING.—(1) Section 207 of Public Law 100–526 is amended by adding at the end the following:

[See section 207 , post at p. 1824]

(c) TASK FORCE REPORT.—(1) Not later than 12 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning—

(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526); and

(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

(A) The Secretary of Defense, who shall be chairman of the task force.

(B) The Attorney General.

(C) The Administrator of the General Services Administration.

(D) The Administrator of the Environmental Protection Agency.

(E) The Chief of Engineers, Department of the Army.

(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.

SEC. 2924. COMMUNITY PREFERENCE CONSIDERATION IN CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.

SEC. 2925. RECOMMENDATIONS OF THE BASE CLOSURE COMMISSION

(a) NORTON AIR FORCE BASE.—(1) Consistent with the recommendations of the Commission on Base Realignment and Closure, the Secretary of the Air Force may not relocate, until after September 30, 1995, any of the functions that were being carried out at the ballistics missile office at Norton Air Force Base, California, on the date on which the Secretary of Defense transmitted a report to the Committees on Armed Services of the Senate and House of Representatives as described in section 202(a)(1) of Public Law 100–526.

(2) This subsection shall take effect as of the date on which the report referred to in subsection (a) was transmitted to such Committees.

(b) GENERAL DIRECTIVE.—Consistent with the requirements of section 201 of Public Law 100–526, the Secretary of Defense shall direct each of the Secretaries of the military departments to take all actions necessary to carry out the recommendations of the Commission on Base Realignment and Closure and to take no action that is inconsistent with such recommendations.

SEC. 2926. CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES

(a) ESTABLISHMENT OF MODEL PROGRAM.—Not later than 90 days after the date of enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall establish a model program to improve the efficiency and effectiveness of the base closure environmental restoration program.

(b) ADMINISTRATOR OF PROGRAM.—The Secretary shall designate the Deputy Assistant Secretary of Defense for Environment as the Administrator of the model program referred to in subsection (a). The Deputy Assistant Secretary shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition.

(c) APPLICABILITY.—This section shall apply to environmental restoration activities at installations selected by the Secretary pursuant to the provisions of subsection (d)(1).

(d) PROGRAM REQUIREMENTS.—In carrying out the model program, the Secretary of Defense shall:

(1) Designate for the model program two installations under his jurisdiction that have been designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) and for which preliminary assessments, site inspections, and Environmental Impact Statements required by law or regulation have been completed. The Secretary shall designate only those installations which have satisfied the requirements of section

204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526).

(2) Compile a prequalification list of prospective contractors for solicitation and negotiation in accordance with the procedures set forth in title IX of the Federal Property and Administrative Services Act (Public Law 92–582; 40 U.S.C. 541 et seq., as amended). Such contractors shall satisfy all applicable statutory and regulatory requirements. In addition, the contractor selected for one of the two installations under this program shall indemnify the Federal Government against all liabilities, claims, penalties, costs, and damages caused by (A) the contractor's breach of any term or provision of the contract; and (B) any negligent or willful act or omission of the contractor, its employees, or its subcontractors in the performance of the contract.

(3) Within 180 days after the date of enactment of this Act, solicit proposals from qualified contractors for response action (as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) at the installations designated under paragraph (1). Such solicitations and proposals shall include the following:

(A) Proposals to perform response action. Such proposals shall include provisions for receiving the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies.

(B) To the maximum extent possible, provisions offered by single prime contractors to perform all phases of the response action, using performance specifications supplied by the Secretary of Defense and including any safeguards the Secretary deems essential to avoid conflict of interest.

(4) Evaluate bids on the basis of price and other evaluation criteria.

(5) Subject to the availability of authorized and appropriated funds to the Department of Defense, make contract awards for response action within 120 days after the solicitation of proposals pursuant to paragraph (3) for the response action, or within 120 days after receipt of the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies, whichever is later.

(e) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the model program 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 (42 U.S.C. 9620).

(f) EXPEDITED AGREEMENTS.—The Secretary shall, with the concurrence of the Administrator of the Environmental Protection Agency, assure compliance with all applicable Federal statutes and regulations and, in addition, take all reasonable and appropriate measures to expedite all necessary administrative decisions, agreements, and concurrences.

(g) REPORT.—The Secretary of Defense shall include a description of the progress made during the preceding fiscal year in implementing and accomplishing the goals of this section within the an-

nual report to Congress required by section 2706 of title 10, United States Code.

(h) APPLICABILITY OF EXISTING LAW.—Nothing in this section affects or modifies, in any way, the obligations or liability of any person under other Federal or State law, including common law, with respect to the disposal or release of hazardous substances or pollutants or contaminants as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

2. 1988 BASE REALIGNMENT AND CLOSURE ACT

[Enacted as title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526, approved Oct. 24, 1988; 10 U.S.C. 2687 note)]

TITLE II—CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

The Secretary shall—

(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

(2) realign all military installations recommended for realignment by such Commission in such report; and

(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

SEC. 202. CONDITIONS

(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

(c) TERMINATION OF AUTHORITY.—(1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

SEC. 203. THE COMMISSION

(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

(b) DUTIES.—The Commission shall—

(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

(A) a copy of such report; and

(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

SEC. 204. IMPLEMENTATION

(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment, if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations in effect on the date of the enactment of this title governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the

local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

(i) the local government in whose jurisdiction the installation is wholly located; or

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date referred to in subparagraph (A); or

(IV) ninety days before the date of the closure of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to

identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this title to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

(B) The transfer of property of a military installation under subparagraph (A) shall be without consideration if the redevelopment authority with respect to the installation—

(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

(i) Road construction.

(ii) Transportation management facilities.

(iii) Storm and sanitary sewer construction.

(iv) Police and fire protection facilities and other public facilities.

(v) Utility construction.

(vi) Building rehabilitation.

(vii) Historic property preservation.

(viii) Pollution prevention equipment or facilities.

(ix) Demolition.

(x) Disposal of hazardous materials generated by demolition.

(xi) Landscaping, grading, and other site or public improvements.

(xii) Planning for or the marketing of the development and reuse of the installation.

(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

(E) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

(F) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(G)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under paragraph (7)(C), with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d) of the Defense Base Closure and Realignment Act of 1990.

(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

(H) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000, at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

(I) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by

the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act [1] (42 U.S.C. 11301 et seq.) to military installations closed under this title.

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

(iii) the Secretary of Health and Human Services—

(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

(II) approves the application under section 501(e) of such Act.

(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

(7)(A) Except as provided in subparagraph (B) or (C), all proceeds—

(i) from any transfer under paragraphs (3) through (6); and

(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account established by section 207(a)(1).

(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

(I) commissary stores; and

(II) real property and facilities for nonappropriated fund instrumentalities.

(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(iii) As used in this subparagraph:

(I) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(II) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(III) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the juris-

diction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

(iii) alternative military installations to those selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.

(e) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.—(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this title with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.

(2) A transfer of real property or facilities may be made under paragraph (1) only if—

(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

(3) Notwithstanding section 207(a)(7), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

(4) The Secretary shall submit to the appropriate committees of Congress a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 21-day period beginning on the date the appropriate committees of Congress receive the report regarding the agreement.

(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

(f) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

SEC. 205. WAIVER

The Secretary may carry out this title without regard to—

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

SEC. 206. REPORTS

(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Sec-

retary under this title, the Commission shall consider the Secretary's study.

(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

SEC. 207. FUNDING

(a) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

(C) proceeds described in section 204(b)(4)(A).

(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of 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 other expenditures made pursuant to section 204(a) during such fiscal year.

(5)(A) Except as provided in subparagraph (B), unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

(B) The Secretary may, after the termination of authority referred to in subparagraph (A), use any unobligated funds referred to in that subparagraph that are not transferred in accordance

with that subparagraph to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate committees of Congress a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this title; and

(B) any amount remaining in the Account.

(7) Proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under this title shall be deposited directly into the Department of Defense Base Closure Account 1990 established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(b) BASE CLOSURE ACCOUNT TO BE EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title.

SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term "joint resolution" means only a joint resolution which is introduced before March 15, 1989, and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ", the blank space being appropriately filled in; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.".

(b)–(f) **[**Omitted—Obsolete**]**

SEC. 209. DEFINITIONS

In this title:

(1) The term "Account" means the Department of Defense Base Closure Account established by section 207(a)(1).

(2) The term "appropriate committees of Congress" means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

(3) The terms "Commission on Base Realignment and Closure" and "Commission" mean the Commission established by the Secretary of Defense in the charter signed by the Secretary

on May 3, 1988, and as altered thereafter with respect to the membership and voting.

(4) The term "charter establishing such Commission" means the charter referred to in paragraph (3).

(5) The term "initiate" includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

(6) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

(7) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions.

(8) The term "Secretary" means the Secretary of Defense.

(9) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(10) The term "redevelopment authority", in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

(11) The term "redevelopment plan" in the case of an installation to be closed under this title, means a plan that—

(A) is agreed to by the redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.

3. SECTION 1013 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966

ACQUISITION OF CERTAIN PROPERTIES SITUATED AT OR NEAR MILITARY BASES WHICH HAVE BEEN ORDERED TO BE CLOSED

SEC. 1013. [42 U.S.C. 3374] (a) Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which is situated at or near a military base or installation which the Department of Defense has, subsequent to November 1, 1964, ordered to be closed in whole or in part, if he determines—

(1) that the owner of such property is, or has been, a Federal employee employed at or in connection with such base or installation (other than a temporary employee serving under a time limitation, a nonappropriated fund instrumentality employee employed at a nonappropriated fund instrumentality operated in connection with such base or installation, or a member of the Armed Forces of the United States assigned thereto;

(2) that the closing of such base or installation, in whole or in part, has required or will require the termination of such owner's employment or service at or in connection with such base or installation or, in the case of a member of the Armed Forces not assigned to that base or installation at the time of public announcement of such closing, will prevent any reassignment of such member to the base or installation; and

(3) that as the result of the actual or pending closing of such base or installation, in whole or in part, or if as the result of such action and other similar action in the same area, there is no present market for the sale of such property upon reasonable terms and conditions.

(b)(1) In order to be eligible for the benefits of this section, a civilian employee or a member of the Armed Forces—

(A) must be assigned to or employed at or in connection with the installation or activity at the time of public announcement of the closure action, or employed by a nonappropriated fund instrumentality operated in connection with such base or installation;

(B) must have been transferred from such installation or activity, or terminated as an employee as a result of a reduction in force, within six months prior to public announcement of the closure action; or

(C) must have been transferred from the installation or activity on an overseas tour within three years prior to public announcement of the closure action.

(2) A member of the Armed Forces shall also be eligible for the benefits of this section if the member—

(A) was transferred from the installation or activity within three years prior to public announcement of the closure action; and

(B) in connection with the transfer, was informed of a future, programmed reassignment to the installation.

(3) The eligibility of a civilian employee and member of the Armed Forces under paragraph (1) and a member of the Armed Forces under paragraph (2) for benefits under this section in connection with the closure of an installation or activity is subject to the additional conditions set out in paragraphs (4) and (5).

(4) At the time of public announcement of the closure action, or at the time of transfer or termination as set forth above, such personnel or employees must—

(A) have been the owner-occupant of the dwelling, or

(B) have vacated the owned dwelling as a result of being ordered into on-post housing during a six-month period prior to the closure announcement.

(5) As a consequence of such closure such employees or personnel must—

(A) be required to relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought, or

(B) be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship that they are unable to meet their mortgage payments and related expenses.

(c) Such persons as the Secretary of Defense may determine to be eligible under the criteria set forth above shall elect either (1) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between (A) 95 per centum of the fair market value of their property (as such value is determined by the Secretary of Defense) prior to public announcement of intention to close all or part of the military base or installation and (B) the fair market value of such property (as such value is so determined) at the time of the sale, or (2) to receive, as purchase price for their property, an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages. The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the Federal Government. Cash payment as compensation for losses sustained in a private sale shall not be made in any case in which the property is encumbered by a mortgage loan guaranteed, insured, or held by a Federal agency unless such mortgage loan is paid, assumed by a purchaser satisfactory to such Federal agency, or otherwise fully satisfied at or prior to the time such cash payment is made. Except in cases of payment as compensation for losses, in the event of foreclosure by mortgagees commenced on or after public announcement of intention to close all or

part of the military base or installation, the Secretary of Defense may reimburse or pay on account of eligible persons such sums as may be paid or be otherwise due and owing by such persons as the result of such foreclosure, including (without limiting the generality of the foregoing) direct costs of judicial foreclosure, expenses and liabilities enforceable according to the terms of their mortgages or promissory notes, and the amount of debts, if any, established against such persons by a Federal agency in the case of loans made, guaranteed, or insured by such agency following liquidation of the security for such loans.

(d) There shall be in the Treasury a fund which shall be available to the Secretary of Defense for the purpose of extending the financial assistance provided above. The capital of such fund shall consist of such sums as may, from time to time, be appropriated thereto, and shall consist also of receipts from the management, rental, or sale of properties acquired under this section, which receipts shall be credited to the fund and shall be available, together with funds appropriated therefor, for purchase or reimbursement purposes as provided above, as well as to defray expenses arising in connection with the acquisition, management, and disposal of such properties, including payment of principal, interest, and expenses of mortgages or other indebtedness thereon, and including the cost of staff services and contract services, costs of insurance, and other indemnity. Any part of such receipts not required for such expenses shall be covered into the Treasury as miscellaneous receipts. Properties acquired under this section shall be conveyed to, and acquired in the name of, the United States. The Secretary of Defense shall have the power to deal with, rent, renovate, and dispose of, whether by sales for cash or credit or otherwise, any properties so acquired: *Provided, however,* That no contract for acquisition, or acquisition, shall be deemed to constitute a contract for or acquisition of family housing units in support of military installations or activities within the meaning of section 406(a) of the Act of August 30, 1957 (42 U.S.C. 1594i)[1], nor shall it be deemed a transaction within the contemplation of section 2662 of title 10, United States Code: *Provided further,* That no properties in foreign countries shall be acquired under this section, except in connection with compensation for property located on a base or installation pursuant to subsection (1).

(e) Payments from the fund created by this section may be made in lieu of taxes to any State or political subdivision thereof, with respect to real property, including improvements thereon, acquired and held under this section. The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation, and shall reflect such allowance as may be considered appropriate for expenditures, if any, by the Government for streets, utilities, or other public services to serve such property.

(f) The title to any property acquired under this section, the eligibility for, and the amounts of, cash payable, and the adminis-

[1] Section 406(a) of the Act of August 30, 1957, was repealed by section 7(3) of Public Law 97–214 (96 Stat. 173).

tration of the preceding provisions of this section, shall conform to such requirements, and shall be administered under such conditions and regulations, as the Secretary of Defense may prescribe. Such regulations shall also prescribe the terms and conditions under which payments may be made and instruments accepted under this section, and all the determinations and decisions made pursuant to such regulations by the Secretary of Defense regarding such payments and conveyances and the terms and conditions under which they are approved or disapproved, shall be final and conclusive and shall not be subject to judicial review.

(g) The Secretary of Defense is authorized to enter into such agreement with the Secretary of Housing and Urban Development as may be appropriate for the purposes of economy and efficiency of administration of this section. Such agreement may provide authority to the Secretary of Housing and Urban Development and his designee to make any or all of the determinations and take any or all of the actions which the Secretary of Defense is authorized to undertake pursuant to the preceding provisions of this section. Any such determinations shall be entitled to finality to the same extent as if made by the Secretary of Defense, and, in event the Secretaries of Defense and Housing and Urban Development so elect, the fund established pursuant to subsection (d) of this section shall be available to the Secretary of Housing and Urban Development to carry out the purposes thereof.

(h) Section 223(a)(8) of the National Housing Act is amended to read as follows:

> "(8) executed in connection with the sale by the Government of any housing acquired pursuant to section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966."

(i) No funds may be appropriated for the acquisition of any property under authority of this section unless such funds have been specifically authorized for such purpose in a military construction authorization act, and no moneys in the fund created pursuant to subsection (d) of this section may be expended for any purpose except as may be provided in appropriation Acts.

(j) Section 108 of the Housing and Urban Development Act of 1965 is repealed.

(k) The authority provided by this section to the Secretary of Defense shall also be available when the Department of Defense has ordered a reduction in the scope of operations at a military base or installation. All references in subsections (a), (b), (c), (n), and (o) to "closures" or "closings" or words of similar effect shall be deemed to include the reduction in scope of operations at a base or installation.

(l) Notwithstanding the provisions of subsection (a)(2) and subsection (b)(5), Federal employees or military personnel employed at or near a military base or installation outside the United States who are otherwise eligible under the criteria as set forth above shall be entitled to compensation for losses arising (1) out of the sale of property, or (2) out of the inability to sell property located on a base or installation, incident to the owner's transfer, reassignment, or involuntary termination of employment, which results in his relocation. Such employees or military personnel whose prop-

erty is located off a base or installation shall be entitled to compensation under subsection (c) for losses sustained in private sales. Such employees or personnel whose property is located on a base or installation, who sell or are unable to find a purchaser for such property, may surrender their interest in such property to the United States, and shall be entitled to compensation, notwithstanding lack of ownership of the land on which such property is located, in an amount equal to (A) 90 per centum of the sum of the present owner's purchase price of the dwelling and improvements, and all costs of ownership including interest on notes, utilities and services, maintenance and insurance, less (B) the total of all housing allowances received from the Government during ownership and occupancy of the dwelling, all rents collected, and the sale price, if any, received for the property, as determined by the Secretary of Defense: *Provided, however,* That the maximum compensation shall in no event exceed 90 per centum of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, if any, relating to such property. For the purpose of this subsection, the term "United States" means the several States and the District of Columbia.

(m) In addition to the coverage provided above, the benefits of this section shall apply, as to closure actions in the several States and the District of Columbia announced after April 1, 1973, to otherwise eligible employees or personnel who are (1) employed or assigned either at or near the base or installation affected by the closure action, and (2) are required to relocate, due to transfer, reassignment or involuntary termination of employment, for reasons other than the closure action.

(n)(1) Assistance under this section shall be provided by the Secretary of Defense with respect to Coast Guard bases and installations ordered to be closed, in whole or in part, after January 1, 1987. Such assistance shall be provided under terms equivalent to those under which assistance is provided under this section for closings of military bases and installations which are under the jurisdiction of the Secretary of Defense.

(2) The Secretary of the department in which the Coast Guard is operating, if other than the Department of Defense, shall reimburse the Secretary of Defense for expenditures under this section made by the Secretary of Defense with respect to closings of Coast Guard bases and installations ordered when the Coast Guard is not operating as a service in the Navy. The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall enter into an agreement under which the Secretary of the department in which the Coast Guard is operating shall carry out such reimbursement.

(o)(1) Assistance under this section shall be provided by the Secretary of Defense with respect to nonappropriated fund instrumentality employees adversely affected by the closure of a base or installation ordered to be closed, in whole or in part, after December 31, 1988.

(2) Notwithstanding subsection (b), a civilian employee who is serving overseas and is entitled to reemployment by the Federal Government (including a nonappropriated fund instrumentality of

the United States) at or in connection with a base or installation ordered to be closed, in whole or in part, shall be entitled to the benefits of this section to the same extent as an employee employed at or in connection with that base or installation.

(3) All payments to a nonappropriated fund instrumentality employee under this section shall be made from the funds available to the Secretary of Defense under subsection (d).

(4) For purposes of this section:

(A) The term "nonappropriated fund instrumentality employee" means a civilian employee who—

(i) is a citizen of the United States; and

(ii) is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, 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.

(B) The term "civilian employee" has the meaning given the term "employee" in section 2105(a) of title 5, United States Code.

4. MISCELLANEOUS BASE REALIGNMENT AND CLOSURE PROVISIONS

a. Military Construction Authorization Act for Fiscal Year 1998

(Division B of Public Law 105–85, approved Nov. 18, 1997)

TITLE XXVIII—GENERAL PROVISIONS

* * * * * * *

Subtitle C—Defense Base Closure and Realignment

* * * * * * *

SEC. 2823. SECURITY, FIRE PROTECTION, AND OTHER SERVICES AT PROPERTY FORMERLY ASSOCIATED WITH RED RIVER ARMY DEPOT, TEXAS.

(a) AUTHORITY TO ENTER INTO AGREEMENT.—(1) The Secretary of the Army may enter into an agreement with the local redevelopment authority for Red River Army Depot, Texas, under which agreement the Secretary provides security services, fire protection services, or hazardous material response services for the authority with respect to the property at the depot that is under the jurisdiction of the authority as a result of the realignment of the depot under the base closure laws.

(2) The Secretary may not enter into the agreement unless the Secretary determines that the provision of services under the agreement is in the best interests of the United States.

(b) REIMBURSEMENT.—The agreement under subsection (a) shall provide for reimbursing the Secretary for the services provided by the Secretary under the agreement.

(c) TREATMENT OF REIMBURSEMENT.—Any amounts received by the Secretary under subsection (b) as reimbursement for services provided under the agreement entered into under subsection (a) shall be credited to the appropriations providing funds for the services. Amounts so credited shall be merged with the appropriations to which credited and shall be available for the purposes, and subject to the conditions and limitations, for which such appropriations are available.

SEC. 2824. [10 U.S.C. 2687 note] REPORT ON CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS.

(a) REPORT.—(1) The Secretary of Defense shall prepare and submit to the congressional defense committees a report on the costs and savings attributable to the rounds of base closures and realignments conducted under the base closure laws and on the need, if any, for additional rounds of base closures and realignments.

(2) For purposes of this section, the term "base closure laws" means—

(A) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note); and

(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).

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) A statement, using data consistent with budget data, of the actual costs and savings (to the extent available for prior fiscal years) and the estimated costs and savings (in the case of future fiscal years) attributable to the closure and realignment of military installations as a result of the base closure laws.

(2) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the estimates of costs and savings submitted to the Defense Base Closure and Realignment Commission as part of the base closure process.

(3) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the annual estimates of costs and savings previously submitted to Congress.

(4) A list of each military installation at which there is authorized to be employed 300 or more civilian personnel, set forth by Armed Force.

(5) An estimate of current excess capacity at military installations, set forth—

(A) as a percentage of the total capacity of the military installations of the Armed Forces with respect to all military installations of the Armed Forces;

(B) as a percentage of the total capacity of the military installations of each Armed Force with respect to the military installations of such Armed Force; and

(C) as a percentage of the total capacity of a type of military installations with respect to military installations of such type.

(6) An assessment of the effect of the previous base closure rounds on military capabilities and the ability of the Armed Forces to fulfill the National Military Strategy.

(7) A description of the types of military installations that would be recommended for closure or realignment in the event of one or more additional base closure rounds, set forth by Armed Force.

(8) The criteria to be used by the Secretary in evaluating military installations for closure or realignment in such event.

(9) The methodologies to be used by the Secretary in identifying military installations for closure or realignment in such event.

(10) An estimate of the costs and savings that the Secretary believes will be achieved as a result of the closure or re-

alignment of military installations in such event, set forth by Armed Force and by year.

(11) An assessment of whether the costs and estimated savings from one or more future rounds of base closures and realignments, currently unauthorized, are already contained in the current Future Years Defense Plan, and, if not, whether the Secretary will recommend modifications in future defense spending in order to accommodate such costs and savings.

(c) METHOD OF PRESENTING INFORMATION.—The statement and comparison required by paragraphs (1) and (2) of subsection (b) shall be set forth by Armed Force, type of facility, and fiscal year, and include the following:

(1) Operation and maintenance costs, including costs associated with expanded operations and support, maintenance of property, administrative support, and allowances for housing at military installations to which functions are transferred as a result of the closure or realignment of other installations.

(2) Military construction costs, including costs associated with rehabilitating, expanding, and constructing facilities to receive personnel and equipment that are transferred to military installations as a result of the closure or realignment of other installations.

(3) Environmental cleanup costs, including costs associated with assessments and restoration.

(4) Economic assistance costs, including—

(A) expenditures on Department of Defense demonstration projects relating to economic assistance;

(B) expenditures by the Office of Economic Adjustment; and

(C) to the extent available, expenditures by the Economic Development Administration, the Federal Aviation Administration, and the Department of Labor relating to economic assistance.

(5) To the extent information is available, unemployment compensation costs, early retirement benefits (including benefits paid under section 5597 of title 5, United States Code), and worker retraining expenses under the Priority Placement Program, title I of the Workforce Investment Act of 1998, and any other federally funded job training program.

(6) Costs associated with military health care.

(7) Savings attributable to changes in military force structure.

(8) Savings due to lower support costs with respect to military installations that are closed or realigned.

(d) DEADLINE.—The Secretary shall submit the report under subsection (a) not later than the date on which the President submits to Congress the budget for fiscal year 2000 under section 1105(a) of title 31, United States Code.

(e) REVIEW.—The Congressional Budget Office and the Comptroller General shall conduct a review of the report prepared under subsection (a).

(f) PROHIBITION ON USE OF FUNDS.—Except as necessary to prepare the report required under subsection (a), no funds authorized to be appropriated or otherwise made available to the Depart-

ment of Defense by this Act or any other Act may be used for the purposes of planning for, or collecting data in anticipation of, an authorization providing for procedures under which the closure and realignment of military installations may be accomplished, until the later of—

(1) the date on which the Secretary submits the report required by subsection (a); and

(2) the date on which the Congressional Budget Office and the Comptroller General complete a review of the report under subsection (e).

(g) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Secretary should develop a system having the capacity to quantify the actual costs and savings attributable to the closure and realignment of military installations pursuant to the base closure process; and

(2) the Secretary should develop the system in expedient fashion, so that the system may be used to quantify costs and savings attributable to the 1995 base closure round.

* * * * * * *

SEC. 2826. PROHIBITION AGAINST CERTAIN CONVEYANCES OF PROPERTY AT NAVAL STATION, LONG BEACH, CALIFORNIA.

(a) PROHIBITION AGAINST DIRECT CONVEYANCE.—In disposing of real property in connection with the closure of Naval Station, Long Beach, California, 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), the Secretary of the Navy may not convey any portion of the property (by sale, lease, or other method) to the China Ocean Shipping Company or any legal successor or subsidiary of that Company (in this section referred to as "COSCO").

(b) PROHIBITION AGAINST INDIRECT CONVEYANCE.—The Secretary of the Navy shall impose as a condition on each conveyance of real property located at Naval Station, Long Beach, California, the requirement that the property may not be subsequently conveyed (by sale, lease, or other method) to COSCO.

(c) REVERSIONARY INTEREST.—If the Secretary of the Navy determines at any time that real property located at Naval Station, Long Beach, California, and conveyed under the Defense Base Closure and Realignment Act of 1990 has been conveyed to COSCO in violation of subsection (b) or is otherwise being used by COSCO in violation of such subsection, all right, title, and interest in and to the property shall revert to the United States, and the United States shall have immediate right of entry thereon.

(d) NATIONAL SECURITY REPORT AND DETERMINATION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense and the Director of the Federal Bureau of Investigation shall separately submit to the President and the congressional defense committees a report regarding the potential national security implications of conveying property described in subsection (a) to COSCO. Each report shall specifically identify any increased risk of espionage, arms smuggling, or other illegal activities that could result from a conveyance to COSCO and recommend appropriate action to address any such risk.

b. Section 112 of the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995

(Public Law 104–6, approved Apr. 10, 1995)

SEC. 112. [10 U.S.C. 2687 note] None of the funds made available to the Department of Defense for any fiscal year for military construction or family housing may be obligated to initiate construction projects upon enactment of this Act for any project on an installation that—

(1) was included in the closure and realignment recommendations submitted by the Secretary of Defense to the Base Closure and Realignment Commission on February 28, 1995, unless removed by the Base Closure and Realignment Commission, or

(2) is included in the closure and realignment recommendation as submitted to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510):

Provided, That the prohibition on obligation of funds for projects located on an installation cited for realignment are only to be in effect if the function or activity with which the project is associated will be transferred from the installation as a result of the realignment: *Provided further,* That this provision will remain in effect unless the Congress enacts a Joint Resolution of Disapproval in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510).

---

c. Military Construction Authorization Act for Fiscal Year 1995

(Division B of Public Law 103–337, approved Oct. 5, 1994)

TITLE XXVIII—GENERAL PROVISIONS

* * * * * * *

Subtitle B—Defense Base Closure and Realignment

* * * * * * *

SEC. 2814. [10 U.S.C. 2687 note] GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS.

(a) AUTHORIZATION TO RENT BASE CLOSURE PROPERTIES.—To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), to facilities of such an installation that have been acquired by a non-Federal entity.

(b) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term "base closure law" means each of the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

---

d. Military Construction Authorization Act for Fiscal Year 1994

(Division B of Public Law 103–160, approved Nov. 30, 1993)

TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT

Subtitle A—Base Closure Community Assistance

SEC. 2901. [10 U.S.C. 2687 note] FINDINGS.

Congress makes the following findings:

(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and

personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.

* * * * * * *

SEC. 2903. AUTHORITY TO TRANSFER PROPERTY AT CLOSED INSTALLATIONS TO AFFECTED COMMUNITIES AND STATES.

* * * * * * *

(c) CONSIDERATION OF ECONOMIC NEEDS.—In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

(d) COOPERATION.—The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.

* * * * * * *

SEC. 2910. IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED.

The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

(2) the date specified in section 120(h)(4)(C)(iii) of such Act.

SEC. 2911. [10 U.S.C. 2687 note] COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS RELATING TO CLOSURE OF INSTALLATIONS.

Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pur-

suant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 2912. [10 U.S.C. 2687 note] PREFERENCE FOR LOCAL AND SMALL BUSINESSES.

(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

(b) DEFINITIONS.—In this section:

(1) The term "small business concern" means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term "small disadvantaged business concern" means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

(3) The term "base closure law" includes section 2687 of title 10, United States Code.

* * * * * * *

SEC. 2914. CLARIFICATION OF UTILIZATION OF FUNDS FOR COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE.

(a) UTILIZATION OF FUNDS.—Subject to subsection (b), funds made available to the Economic Development Administration for economic adjustment assistance under section 4305 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2700) may by utilized by the administration for administrative activities in support of the provision of such assistance.

(b) LIMITATION.—Not more than three percent of the funds referred to in subsection (a) may be utilized by the administration for the administrative activities referred to in such subsection.

SEC. 2915. [10 U.S.C. 2687 note] TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY THE CLOSURE OF INSTALLATIONS.

(a) IN GENERAL.—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

(b) TIMING OF DESIGNATION.—A transition coordinator shall be designated for an installation under subsection (a) as follows:

(1) Not later than 15 days after the date of approval of closure of the installation.

(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act, not later than 15 days after such date of enactment.

(c) RESPONSIBILITIES.—A transition coordinator designated with respect to an installation shall—

(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the Stewart B. McKinney Homeless Assistance Act [1]

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

(42 U.S.C. 11320(b)) for the State in which the installation is located.

* * * * * * *

SEC. 2918. [10 U.S.C. 2687 note] DEFINITIONS.

(a) SUBTITLE A OF TITLE XXIX.—In this subtitle:

(1) The term "base closure law" means the following:

(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

(3) The term "redevelopment authority", in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

(4) The term "redevelopment plan", in the case of an installation to be closed under a base closure law, means a plan that—

(A) is agreed to by the redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

* * * * * * *

Subtitle B—Other Matters

* * * * * * *

SEC. 2922. [10 U.S.C. 2687 note] LIMITATION ON EXPENDITURE OF FUNDS FROM THE DEFENSE BASE CLOSURE ACCOUNT 1990 FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS.

(a) LIMITATION.—If the Secretary of Defense recommends to the Defense Base Closure and Realignment Commission pursuant to section 2903(c) of the 1990 base closure Act that an installation be closed or realigned, the Secretary identifies in documents submitted to the Commission one or more installations to which a function performed at the recommended installation would be transferred, and the recommended installation is closed or realigned pursuant to such Act, then, except as provided in subsection (b), funds in the Defense Base Closure Account 1990 may not be used for military construction in support of the transfer of

that function to any installation other than an installation so identified in such documents.

(b) EXCEPTION.—The limitation in subsection (a) ceases to be applicable to military construction in support of the transfer of a function to an installation on the 60th day following the date on which the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a notification of the proposed transfer that—

(1) identifies the installation to which the function is to be transferred; and

(2) includes the justification for the transfer to such installation.

(c) DEFINITIONS.—In this section:

(1) The term "1990 base closure Act" means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) The term "Defense Base Closure Account 1990" means the account established under section 2906 of the 1990 base closure Act.

---

e. Military Construction Authorization Act for Fiscal Year 1992

(Division B of Public Law 102–190, approved Dec. 5, 1991)

TITLE XXVIII—GENERAL PROVISIONS

* * * * * * *

Part B—Defense Base Closure and Realignment

* * * * * * *

SEC. 2825. [10 U.S.C. 2687 note] DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED.

(a) AUTHORITY TO CONVEY FACILITIES.—(1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that—

(A) conducts business in the facility; and

(B) constructed or substantially renovated the facility using funds of the depository institution.

(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

(b) AUTHORITY TO CONVEY LAND.—As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository insti-

tution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

(c) LIMITATION.—The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

(d) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term "base closure law" means the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note).

(3) Section 2687 of title 10, United States Code.

(4) Any other similar law enacted after the date of the enactment of this Act.

(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term "depository institution" has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

5. USE OF SURPLUS PROPERTY TO ASSIST HOMELESS

a. Section 501 of the McKinney-Vento Homeless Assistance Act

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

SEC. 501. [42 U.S.C. 11411] USE OF UNUTILIZED AND UNDERUTILIZED PUBLIC BUILDINGS AND REAL PROPERTY TO ASSIST THE HOMELESS.

(a) IDENTIFICATION OF SUITABLE PROPERTY.—The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)). No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) AVAILABILITY OF PROPERTY.—(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a). No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

(i) a statement of intention to determine the property excess to the agency's needs;

(ii) a statement of intention to make the property available for use to assist the homeless; or

(iii) a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

(i) a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(ii) a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(2)(A) All properties identified by the Secretary under subsection (a) shall be available for application—

(i) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and

(ii) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k) (1) and (4)).

(3) The Secretary shall maintain a written public record of—

(A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

(B) the responses of landholding agencies to such identifications.

(c) PUBLICATION OF PROPERTIES.—(1)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1), the Secretary shall publish in the Federal Register—

(i) a list of all properties reviewed by the Secretary under subsection (a); and

(ii) a list of all properties that are available under subsection (b)(2) for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.

(2)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1), the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the Interagency Council on the Homeless. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.

(4)(A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—

(i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and

(ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) if—

(i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or

(ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

(d) HOLDING PERIOD.—(1) Properties published under subsection (c)(1)(A)(ii) as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the Interagency Council on the Homeless.

(4)(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an

application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under section 203 of the Federal Property and Administratives Services Act of 1949 (40 U.S.C. 484), except as provided in subsection (f)(3)(A).

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f).

(e) APPLICATION FOR PROPERTY.—(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) as available for application for use to assist the homeless.

(2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(f) MAKING PROPERTY AVAILABLE TO REPRESENTATIVES OF THE HOMELESS.—(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) shall be made promptly available by permit or lease, or by deed as a public health use under paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k) (1) and (4)), to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A)(ii) shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)(A) In disposing of surplus property by deed or lease under section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484), the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 203(k) of such Act is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator of the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services

shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)). The lease term shall not be affected if a deed is not granted.

(g) RECORDS.—The Secretary shall maintain a written public record of—

(1) the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and

(2) the responses of landholding agencies under subsection (b)(1).

(h) APPLICABILITY TO PROPERTY UNDER BASE CLOSURE PROCESS.—(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) after the date of the enactment of this subsection.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), before such date, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of General Services;

(2) each of the terms "excess property" and "surplus property" has the meaning given that term under section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472);

(3) the term "landholding agency" means a Federal department or agency with statutory to control real property;

(4) the term "representative of the homeless" means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and

(5) the term "Secretary" means the Secretary of Housing and Urban Development, except as otherwise provided.

b. Section 2(e) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994

(Public Law 103–421; 108 Stat. 4352; 10 U.S.C. 2687 note)

SEC. 2. DISPOSAL OF BUILDINGS AND PROPERTY AT MILITARY INSTALLATIONS APPROVED FOR CLOSURE.

* * * * * * *

(e) APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF ACT.—(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act [1], and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be determined in accordance with the provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the

[1] In subsection (e), the reference to "this Act" means the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, which was enacted on October 25, 1994.

60-day period beginning on the date of the enactment of this Act, carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the Stewart B. McKinney Homeless Assistance Act [1] (42 U.S.C. 11411).

(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

(5) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall—

(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act and are pending with that Secretary on that date; and

(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with—

(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

(ii) sufficient funding to secure such substantially equivalent properties;

(iii) services and activities that meet the needs identified in the application; or

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

(iv) a combination of the properties, funding, and services and activities described in clauses (i), (ii), and (iii).

(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1)(B).

(7) For purposes of this subsection:

(A) The term "1988 base closure Act" means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The term "1990 base closure Act" means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

6. SURPLUS PROPERTY UNDER FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

[Sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484, 485) control the disposal of surplus property generally by the Federal Government.]

SEC. 203. [40 U.S.C. 484] DISPOSAL OF SURPLUS PROPERTY.

(a) Except as otherwise provided in this section, the Administrator shall have supervision and direction over the disposition of surplus property. Such property shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act.

(b) The care and handling of surplus property, pending its disposition, and the disposal of surplus property, may be performed by the General Services Administration or, when so determined by the Administrator, by the executive agency in possession thereof or by any other executive agency consenting thereto.

(c) Any executive agency designated or authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Administrator deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action at it deems necessary or proper to dispose of such property under the provisions of this title.

(d) A deed, bill of sale, lease, or other instrument executed by or on behalf of any executive agency purporting to transfer title or any other interest in surplus property under this title shall be conclusive evidence of compliance with the provisions of this title insofar as concerns title or other interest of any bona fide grantee or transferee for value and without notice of lack of such compliance.

(e)(1) All disposals or contracts for disposal of surplus property (other than by abandonment, destruction, donation, or through contract brokers) made or authorized by the Administrator shall be made after publicly advertising for bids, under regulations prescribed by the Administrator, except as provided in paragraphs (3) and (5) of this subsection.

(2) Whenever public advertising for bids is required under paragraph (1) of this subsection—

(A) the advertisement for bids shall be made at such time previous to the disposal or contract, through such methods, and on such terms and conditions as shall permit that full and free competition which is consistent with the value and nature of the property involved;

(B) all bids shall be publicly disclosed at the time and place stated in the advertisement;

(C) award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided,* That all bids may be rejected when it is in the public interest to do so.

(3) Disposals and contracts for disposal may be negotiated, under regulations prescribed by the Administrator, without regard to paragraphs (1) and (2) of this subsection but subject to obtaining such competition as is feasible under the circumstances, if—

(A) necessary in the public interest during the period of a national emergency declared by the President or the Congress, with respect to a particular lot or lots of personal property or, for a period not exceeding three months, with respect to a specifically described category or categories of personal property as determined by the Administrator;

(B) the public health, safety, or national security will thereby be promoted by a particular disposal of personal property;

(C) public exigency will not admit of the delay incident to advertising certain personal property;

(D) the personal property involved is of a nature and quantity which, if disposed of under paragraphs (1) and (2) of this subsection, would cause such an impact on an industry or industries as adversely to affect the national economy, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(E) the estimated fair market value of the property involved does not exceed $15,000;

(F) bid prices after advertising therefor are not reasonable (either as to all or some part of the property) or have not been independently arrived at in open competition;

(G) with respect to real property only, the character or condition of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation;

(H) the disposal will be to States, Territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(I) otherwise authorized by this Act or other law.

(4) Disposals and contracts for disposal of surplus real and related personal property through contract realty brokers employed by the Administrator shall be made in the manner followed in similar commercial transactions under such regulations as may be prescribed by the Administrator: *Provided,* That such regulations shall require that wide public notice of availability of the property for disposal be given by the brokers.

(5)(A) Negotiated sales of personal property at fixed prices may be made by the Administrator either directly or through the use of disposal contractors without regard to the limitations set forth in

paragraphs (1) and (2) of this subsection: *Provided,* That such sales be publicized to the extent consistent with the value and nature of the property involved, that the prices established shall reflect the estimated fair market value thereof, and that such sales shall be limited to those categories of personal property as to which the Administrator determines that such methods of disposal will best serve the interests of the Government.

(B) Under regulations and restrictions to be prescribed by the Administrator, property to be sold pursuant to this paragraph may be offered to organizations specified in paragraph (3)(H) of this subsection that have expressed an interest in the property to permit such an organization a prior opportunity to purchase at the prices fixed for such property.

(6)(A) Except as otherwise provided by subparagraph (C) of this paragraph, an explanatory statement shall be prepared of the circumstances of each disposal by negotiation of—

(i) any personal property which has an estimated fair market value in excess of $15,000;

(ii) any real property that has an estimated fair market value in excess of $100,000, except that any real property disposed of by lease or exchange shall only be subject to clauses (iii) through (v) of this subparagraph;

(iii) any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of $100,000 for any of such years;

(iv) any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of $100,000; or

(v) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(B) Each such statement shall be transmitted to the appropriate committees of the Congress in advance of such disposal, and a copy thereof shall be preserved in the files of the executive agency making such disposal.

(C) No such statement need be transmitted to any such committee with respect to any disposal of personal property made under paragraph (5) at a fixed price, or to property disposals authorized by any other provision of law to be made without advertising.

(D) The annual report of the Administrator under section 212 shall contain or be accompanied by a listing and description of any negotiated disposals of surplus property having an estimated fair market value of more than $15,000, in the case of real property, or $5,000, in the case of any other property, other than disposals for which an explanatory statement has been transmitted under this paragraph.

(f) [1] Subject to regulations of the Administrator, any executive agency may authorize any contractor with such agency or subcontractor thereunder to retain or dispose of any contractor inventory.

[1] Subsections (f), (g), (h), and (i), should be full measurement.

(g)[1] The Administrator, in formulating policies with respect to the disposal of surplus agricultural commodities, surplus foods processed from agricultural commodities, and surplus cotton or woolen goods, shall consult with the Secretary of Agriculture. Such policies shall be so formulated as to prevent surplus agricultural commodities, or surplus food processed from agricultural commodities, from being dumped on the market in a disorderly manner and disrupting the market prices for agricultural commodities.

(h)[1] Whenever the Secretary of Agriculture determines such action to be required to assist him in carrying out his responsibilities with respect to price support or stabilization, the Administrator shall transfer without charge to the Department of Agriculture any surplus agricultural commodities, foods, or cotton or woolen goods to be disposed of. Receipts resulting from disposal by the Department of Agriculture under this subsection shall be deposited pursuant to any authority available to the Secretary of Agriculture, except that net proceeds of any sale of surplus property so transferred shall be credited pursuant to section 204(c), when applicable. Surplus farm commodities so transferred shall not be sold, other than for export, in quantities in excess of, or at prices less than, those applicable with respect to sales of such commodities by the Commodity Credit Corporation.

(i)[1] The Secretary of Commerce shall dispose of surplus vessels of one thousand five hundred gross tons or more which the Secretary determines to be merchant vessels or capable of conversion to merchant use, and such vessels shall be disposed of only in accordance with the provisions of the Merchant Marine Act, 1936, as amended, and other laws authorizing the sale of such vessels.

(j)(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer, without cost (except for costs of care and handling), any personal property under the control of any executive agency which has been determined to be surplus property to the State agency in each State designated under State law as the agency responsible for the fair and equitable distribution, through donation, of all property transferred in accordance with the provisions of paragraphs (2) and (3) of this subsection. In determining whether the property is to be transferred for donation under this subsection, no distinction shall be made between property capitalized in a working-capital fund established under section 2208 of title 10, United States Code, or any similar fund, and any other property.

(2) In the case of surplus personal property under the control of the Department of Defense, the Secretary of Defense shall determine whether such property is usable and necessary for educational activities which are of special interest to the armed services, such as maritime academies, or military, naval, Air Force, or Coast Guard preparatory schools. If the Secretary determines that such property is usable and necessary for said purposes, the Secretary shall allocate it for transfer by the Administrator to the ap-

[1] See footnote on previous page.

propriate State agency for distribution, through donation, to such educational activities. If the Secretary determines that such property is not usable and necessary for such purposes, it may be disposed of in accordance with paragraph (3) of this subsection.

(3) Except for surplus personal property transferred pursuant to paragraph (2) of this subsection, the Administrator shall, pursuant to criteria which are based on need and utilization and established after such consultation with State agencies as is feasible, allocate such property among the States in a fair and equitable basis (taking into account the condition of the property as well as the original acquisition cost thereof), and transfer to the State agency property selected by it for distribution through donation within the State—

(A) to any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or

(B) to nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, providers of assistance to homeless individuals, providers of assistance to families or individuals whose annual incomes are below the poverty line (as that term is defined in section 673 of the Community Services Block Grant Act), schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the Federal Communications Commission a educational radio or educational television stations, museums attended by the public, and libraries serving free all residents of a community, district, State, or region, which are exempt from taxation under section 501 of the Internal Revenue Code of 1954, for purposes of education or public health (including research for any such purpose).

The Administrator, in allocating and transferring property under this paragraph, shall give fair consideration, consistently with the established criteria, to expressions of need and interest on the part of public agencies and other eligible institutions within that State, and shall give special consideration to requests by eligible recipients, transmitted through the State agency, for specific items of property.

(4)(A) before property may be transferred to any State agency, such State shall develop, according to State law, a detailed plan of operation, developed in conformity with the provisions of this subsection, which shall include adequate assurance that the State agency has the necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups. The chief executive officer shall certify and submit the plan to the Administrator. In the event that a State legislature has not developed, according to

State law, a State plan within two hundred and seventy calendar days after the date of enactment of this Act, the chief executive officer of the State shall approve, and submit to the Administrator, a temporary State plan. No such plan, and no major amendment thereof, shall be filed with the Administrator until sixty days after general notice of the proposed plan or amendment has been published and interested persons have been given at least thirty days during which to submit comments. In developing and implementing the State plan, the relative needs and resources of all public agencies and other eligible institutions within the State shall be taken into consideration. The Administrator may consult with interested Federal agencies for purposes of obtaining their views concerning the administration and operation of this subsection.

(B) The State plan shall provide for the fair and equitable distribution of property within such State based on the relative needs and resources of interested public agencies and other eligible institutions within the State and their abilities to utilize the property.

(C)(i) The State plan of operation shall require the State agency to utilize a management control system and accounting system for donable property transferred under this section of the same types as are required by State law for State-owned property, except that the State agency, with the approval of the chief executive officer of the State, may elect, in lieu of such systems, to utilize such other management control and accounting systems as are effective to govern the utilization, inventory control, accountability, and disposal of property under this subsection.

(ii) The State plan of operation shall require the State agency to provide for the return of donable property for further distribution if such property, while still usable, has not been placed in use for the purpose for which it was donated within one year of donation or ceases to be used by the donee for such purposes within one year of being placed in use.

(iii) The State plan shall require the State agency, insofar as practicable, to select property requested by a public agency or other eligible institution within the State and, if so requested by the recipient, to arrange shipment of that property, when acquired, directly to the recipient.

(D) Where the State agency is authorized to assess and collect service charges from participating recipients to cover direct and reasonable indirect costs of its activities, the method of establishing such charges shall be set out in the State plan of operation. Such charges shall be fair and equitable and shall be based on services performed by the State agency, including, but not limited to, screening, packing, crating, removal, and transportation.

(E) The State plan of operation shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of property to be donated under paragraph (3) of this subsection and shall impose such terms, conditions, reservations, and restrictions in the case of any passenger motor vehicle and any item of other property having a unit acquisition cost of $5,000 or more. If the Administrator finds that an item or items have characteristics that require special handling or use limitations, he may impose appropriate conditions on the donation of such property.

(F) The State plan of operation shall provide that surplus property which the State agency determines cannot be utilized by eligible recipients shall be disposed of—

(i) subject to the disapproval of the Administrator within thirty days after notice to him, through transfer by the State agency to another State agency or through abandonment or destruction where the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale; or

(ii) otherwise pursuant to the provisions of this Act under such terms and conditions and in such manner as may be prescribed by the Administrator.

Notwithstanding sections 204 and 402(c) of this Act, the Administrator, from the proceeds of sale of any such property, may reimburse the State agency for such expenses relating to the care and handling of such property as he shall deem appropriate.

(5) As used in this subsection, (A) the term "public agency" means any State, political subdivision thereof (including any unit of local government or economic development district), or any department, agency, instrumentality thereof (including instrumentalities created by compact or other agreement between States or political subdivision), or any Indian tribe, band, group, pueblo, or community located on a State reservation and (B) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam, and American Samoa.

(k)(1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Secretary of Health, Education and Welfare for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of Health, Education, and Welfare as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research.

(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for school, classroom, or other educational use, the Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property including buildings, fixtures, and equipment situated thereon, for educational purposes to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other nonprofit educational institutions which have been held exempt from taxation under section 101(6) of the Internal Revenue Code.

(B) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for public-health use, the Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property for public-heath purposes, including research, to the States and their political subdivisions and in-

strumentalities, and to tax-supported medical institutions, and to hospitals or other similar institutions not operated for profit which have been held exempt from taxation under section 101(6) of the Internal Revenue Code.

(C) In fixing the sale or lease value of property to be disposed of under subparagraph (A) and subparagraph (B) of this paragraph, the Secretary of Health, Education, and Welfare shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or institution.

(D) "States" as used in this subsection includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States

(2) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Secretary of the Interior for disposal, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of the Interior as needed for use as a public park or recreation area.

(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of the Interior of a proposed transfer of property for public park or public recreational use, the Secretary of the Interior, through such officers or employees of the Department of the Interior as he may designate, may sell or lease such real property, including buildings, fixtures, and equipment situated thereon, for public park or public recreational purposes to any State, political subdivision, instrumentalities thereof, or municipality.

(B) In fixing the sale or lease value of property to be disposed of under subparagraph (A) of this paragraph, the Secretary of the Interior shall take into consideration any benefit which has accrued or may accrue in the United States from the use of such property by any such State, political subdivision, instrumentality, or municipality.

(C) The deed of conveyance of any surplus real property disposed of under the provisions of this subsection—

(i)[1] shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States; and

(ii)[1] may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Secretary of the Interior to be necessary to safeguard the interests of the United States.

(D) "States" as used in this subsection includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

[1] Clauses (i) and (ii) of subparagraph (C) have the wrong indention.

(3) Without monetary consideration to the United States, the Administrator may convey to any State, political subdivision, instrumentalities thereof, or municipality, all of the right, title, and interest of the United States in and to any surplus real and related personal property which the Secretary of the Interior has determined is suitable and desirable for use as a historic monument, for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings and Monuments established by section 463 of Title 16, and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and proper observation of its historic features.

(A) The Administrator may authorize use of any property conveyed under this subsection or the Surplus Property Act of 1944, as amended, for revenue-producing activities if the Secretary of the Interior (i) determines that such activities are compatible with use of the property for history monument purposes, (ii) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, and (iii) approves the grantee's plan for financing repair, rehabilitation, restoration, and maintenance of the property. The Secretary shall not approve a financial plan unless it provides that incomes in excess of costs of repair, rehabilitation, restoration, and maintenance shall be used by the grantee only for public historic preservation, park, or recreational purposes. The Administrator may not authorize any uses under this subsection until the Secretary has examined and approved the accounting and financial procedures used by the grantee. The Secretary may periodically audit the records of the grantee, directly related to the property conveyed.

(B) The deed of conveyance of any surplus real property disposed of under the provisions of this subsection—

(i) shall provide that all such property shall be used and maintained for historic monument purposes in perpetuity, and that in the event that the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and

(ii) may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator to be necessary to safeguard the interest of the United States.

(C) "States" as used in this subsection, includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(4) Subject to the disapproval of the Administrator within thirty days after notice to him of any action to be taken under this subsection, except with respect to personal property transferred pursuant to subsection (j)—

(A) [1] The Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and tax-supported and other nonprofit educational institutions for school, classroom, or other educational use;

(B) the Secretary of Health, Education, and Welfare, through such officer or employees of the Department of Health, Education, and Welfare as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions and instrumentalities thereof, supported medical institutions, and to hospitals and other similar institutions not operated for profit, for use in the protection of public health (including research);

(C) the Secretary of the Interior, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and municipalities for use as a public park, public recreational area, or historic monument for the benefit of the public;

(D) the Secretary of Defense, in case of property transferred pursuant to the Surplus Property Act of 1944, as amended, to States, political subdivisions, and tax-supported instrumentalities thereof for use in the training and maintenance of civilian components of the armed forces; or

(E) the Secretary of Housing and Urban Development, through such officers or employees of the Department of Housing and Urban Development as the Secretary may designate, in the case of property transferred under paragraph (6). [2]

is authorized and directed—

(i) to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;

(ii) to reform, correct, or amend any such instrument by the execution of a corrective, reformative or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(iii) to (I) grant releases from any of the terms, conditions, reservations and restrictions contained in, and (II) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by, any instrument by which such transfer was made, if he determines that the property so transferred no longer services the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: *Provided*, That any such re-

[1] In subparagraph (A) of paragraph (4), the first letter should not be capitalized.
[2] Probably should not be a period at the end of subparagraph (E).

lease, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interests of the United States.

(5)(A) Under such regulations as the Administrator may prescribe, the Administrator is authorized, in the discretion of the Administrator, to assign to the Chief Executive Officer of the Corporation for National and Community Service for disposal such surplus property as is recommended by the Chief Executive Officer as being needed for national service activities.

(B) Subject to the disapproval of the Administrator, within 30 days after notice to the Administrator by the Chief Executive Officer of the Corporation for National and Community Service of a proposed transfer of property for such activities, the Chief Executive Officer, through such officers or employees of the Corporation as the Chief Executive Officer may designate, may sell, lease, or donate such property to any entity that receives financial assistance under the National and Community Service Act of 1990 for such activities.

(C) In fixing the sale or lease value of such property, the Chief Executive Officer of the Corporation for National and Community Service shall comply with the requirements of paragraph (1)(C).

(6)(A) Under such regulations as the Administrator may prescribe, the Administrator may, in the discretion of the Administrator, assign to the Secretary of Housing and Urban Development for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for providing housing or housing assistance for low-income individuals or families.

(B) Subject to the disapproval of the Administrator within 30 days after notice to the Administrator by the Secretary of Housing and Urban Development of a proposed transfer of property for the purpose of providing such housing or housing assistance, the Secretary, through such officers or employees of the Department of Housing and Urban Development as the Secretary may designate, may sell or lease such property for that purpose to any State, any political subdivision or instrumentality of a State, or any nonprofit organization that exists for the primary purpose of providing housing or housing assistance for low-income individuals or families.

(C) The Administrator shall disapprove a proposed transfer of property under this paragraph unless the Administrator determines that the property will be used for low-income housing opportunities through the construction, rehabilitation, or refurbishment of self-help housing, under terms that require that—

(i) any individual or family receiving housing or housing assistance constructed, rehabilitated, or refurbished through use of the property shall contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(ii) dwellings constructed, rehabilitated, or refurbished through use of the property shall be quality dwellings that comply with local building and safety codes and standards and shall be available at prices below prevailing market prices.

(D)(i) The Administrator shall ensure that nonprofit organizations that are sold or leased property under subparagraph (B) shall develop and use guidelines to take into consideration any disability of an individual for the purposes of fulfilling any self-help requirement under subparagraph (C)(i).

(ii) For purposes of this subparagraph, the term "disability" has the meaning given such term under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)).

(E)(i) In fixing the sale or lease value of property to be disposed of under this paragraph, the Secretary of Housing and Urban Development shall take into consideration and discount the value with respect to any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or nonprofit organization.

(ii) The amount of the discount under clause (i) shall be 75 percent of the market value of the property, except that the Secretary may discount by a greater percentage if the Secretary, in consultation with the Administrator, determines that a higher percentage is justified.

(l)[1] Under such regulation as he may prescribe, the Administrator is authorized in his discretion to donate to the American National Red Cross, for charitable purposes, such property, which was processed, produced, or donated by the American National Red Cross, as shall have been determined to be surplus property.

(m)[1] The Administrator is authorized to take possession of abandoned and other unclaimed property on premises owned or leased by the Government to determine when title thereto vested in the United States, and to utilize, transfer or otherwise dispose of such property. Former owners of such property upon proper claim filed within three years from the date of vesting of title in the United States shall be paid the proceeds realized from the disposition of such property or, if the property is used or transferred, the fair value therefor as of the time title was vested in the United States as determined by the Administrator, less in either case the costs incident to the care and handling of such property as determined by the Administrator.

(n) For the purpose of carrying into effect the provisions of subsection (j), the Administrator or the head of any Federal agency designated by the Administrator, and, with respect to subsection (k)(1), the Secretary of Health, Education, and Welfare or the head of any Federal agency designated by the Secretary, are authorized to enter into cooperative agreements with State surplus property distribution agencies designated in conformity with subsection (j). Such cooperative agreements may provide for utilization by such Federal agency, with or without payment or reimbursement, of the property, facilities, personnel, and services of the State agency in carrying out any such program, and for making available to such State agency, with or without payment or reimbursement, property, facilities, personnel, or services of such Federal agency in connection with such utilization. Payment or reimbursement, if any,

[1] Subsections (l) and (m) is erroneously indented.

from the State agency shall be credited to the fund or appropriation against which charges would be made if no payment or reimbursement were received. In addition, under such cooperative agreements and subject to such other conditions as may be imposed by the Administrator, or with respect to subsection (k)(1) by the Secretary of Health, Education, and Welfare, any surplus property transferred to the State agency for distribution pursuant to subsection (j)(3) may be retained by the State agency for use in performing its functions. Unless otherwise directed by the Administrator, title to property so retained shall vest in the State agency.

(o)(1) Six months after the end of the first full fiscal year after the date of enactment of this paragraph, and biennially thereafter, the Administrator shall transmit a report to the Congress that covers the initial period from such effective date and each succeeding biennial period and contains—

(A) a full and independent evaluation of the operation of programs for the donation of Federal surplus personal property,

(B) statistical information on the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations and surplus personal property approved for donation to the State Agencies for Surplus Property and donated to eligible non-Federal organizations during each succeeding biennial period, and

(C) such recommendations as the Administrator determines to be necessary or desirable.

(2) A copy of each report made under paragraph (3)[1] shall also be simultaneously furnished to the Comptroller General of the United States. The Comptroller General shall review and evaluate the report and make any comments and recommendations to the Congress thereon, as he deems necessary or desirable.

(p)(1)(A) Under such regulation as he may prescribe, the Administrator is authorized in his discretion to transfer or convey to the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision or instrumentality thereof, surplus real and related personal property determined by the Attorney General to be required for correctional facility use by the authorized transferee or grantee under an appropriate program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyance under this authority shall be made by the Administrator without monetary consideration to the United States. If the Attorney General determines that any surplus property transferred or conveyed pursuant to an agreement entered into between March 1, 1982, and the enactment of this subsection was suitable for transfer or conveyance under this subsection, the Administrator shall reimburse the transferee for any monetary consideration paid to the United States for such transfer or conveyance.

[1] In paragraph (2), the reference to paragraph (3) probably should be a reference to paragraph (1).

(B) The Administrator may exercise the authority under subparagraph (A) with respect to such surplus real and related property needed by the transferee or grantee for—

(i) law enforcement purposes, as determined by the Attorney General; or

(ii) emergency management response purposes, including fire and rescue services, as determined by the Director of the Federal Emergency Management Agency.

(2) The deed of conveyance of any surplus real and related personal property disposed of under the provisions of this subsection—

(A) shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and

(B) may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator to be necessary to safeguard the interests of the United States.

(3) With respect to surplus real and related personal property conveyed pursuant to this subsection, the Administrator is authorized and directed—

(A) to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;

(B) to reform, correct, or amend any such instrument by the execution of a corrective reformative or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(C) to (i) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (ii) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: *Provided,* That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he or she shall deem necessary to protect or advance the interests of the United States.

(q)(1) Under such regulations as the Administrator, after consultation with the Secretary of Defense, may prescribe, the Administrator, or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law, may, in his or her discretion, assign to the Secretary of Transportation for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of Transportation as being needed for the development or operation of a port facility.

(2) Subject to the disapproval of the Administrator or the Secretary of Defense within 30 days after notice by the Secretary of

Transportation of a proposed conveyance of property for any of the purposes described in paragraph (1), the Secretary of Transportation, through such officers or employees of the Department of Transportation as he or she may designate, may convey, at no consideration to the United States, such surplus real property, including buildings, fixtures, and equipment situated thereon, for use in the development or operation of a port facility to any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

(3) No transfer of property may be made under this subsection until the Secretary of Transportation has—

(A) determined, after consultation with the Secretary of Labor, that the property to be conveyed is located in an area of serious economic disruption;

(B) received and, after consultation with the Secretary of Commerce, approved an economic development plan submitted by an eligible grantee and based on assured use of the property to be conveyed as part of a necessary economic development program; and

(C) transmitted to Congress an explanatory statement that contains information substantially similar to the information contained in statements prepared under subsection (e)(6).

(4) The instrument of conveyance of any surplus real property and related personal property disposed of under this subsection shall—

(A) provide that all such property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and

(B) contain such additional terms, reservations, restrictions, and conditions as the Secretary of Transportation shall by regulation require to assure use of the property for the purposes for which it was conveyed and to safeguard the interests of the United States.

(5) With respect to surplus real property and related personal property conveyed pursuant to this subsection, the Secretary of Transportation shall—

(A) determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such conveyance was made;

(B) reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument if necessary to correct such instrument or to conform such conveyance to the requirements of applicable law; and

(C)(i) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (ii) convey, quitclaim, or release to the grantee any right or interest reserved to the United States by, any instrument by which such conveyance was made, if the Secretary of Transportation determines

that the property so conveyed no longer serves the purpose for which it was conveyed, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so conveyed, except that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as the Secretary of Transportation considers necessary to protect or advance the interests of the United States.

(6) In this section, the term "base closure law" means the following:

(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(r) The head of a Federal agency having control of a canine that has been used by a Federal agency in the performance of law enforcement duties and that has been determined by the agency to be no longer needed for official purposes may donate the canine to an individual who has experience handling canines in the performance of those duties.

SEC. 204. [40 U.S.C. 485] PROCEEDS FROM TRANSFER OR DISPOSITION OF PROPERTY

(a) All proceeds under this title from any transfer of excess property to a Federal agency for its use, or from any sale, lease, or other disposition of surplus property, shall be covered into the Treasury as miscellaneous receipts, except as provided in subsections (b), (c), (d), (e), and (h) of this section.

(b) Except as provided in subsection (h), all the proceeds of such dispositions of surplus real and related personal property made by the Administrator of General Services shall be set aside in a separate fund in the Treasury. Not more than an amount to be determined quarterly by the director of the Office of Management and budget may be obligated from such fund by the Administrator to pay the direct expenses incurred for the utilization of excess property and the disposal of surplus property under this Act for fees of appraisers, auctioneers, and realty brokers, for costs of environmental and historic preservation services, and for advertising and surveying. Such payments from this fund may be used either to pay such expenses directly or to reimburse the fund or appropriation initially bearing such expenses. Fees paid to appraisers, auctioneers, and brokers shall be in accordance with the scale of fees customarily paid for such services in similar commercial transactions, and in no event shall more than 12 per centum of the proceeds of all dispositions within each fiscal year of surplus real and related personal property be paid out of such proceeds under this authorization to meet direct expenses incurred in connection with such dispositions. Periodically, but not less often than once each year, any excess funds beyond current operating needs shall be transferred from the fund to miscellaneous receipts: *Provided,* That a report of receipts, disbursements, and transfers to miscellaneous receipts under this authorization shall be made annually in

connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress.

(c) Where the property transferred or disposed of was acquired by the use of funds either not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue or receipts, then the net proceeds of the disposition or transfer shall be credited to the reimbursable fund or appropriation or paid to the Federal agency which determined such property to be excess: *Provided,* That the proceeds shall be credited to miscellaneous receipts in any case when the agency which determined the property to be excess shall deem it uneconomical or impractical to ascertain the amount of net proceeds. A used in this subsection, the term "net proceeds of the disposition or transfer" means the proceeds of the disposition or transfer minus all expenses incurred for care and handling and disposition or transfer.

(d) Any Federal agency disposing of surplus property under this title (1) may deposit, in a special account with the Treasurer of the United States, such amount of the proceeds of such dispositions as it deems necessary to permit appropriate refunds to purchasers when any disposition is rescinded or does not become final, or payments for breach of any warranty, and (2) may withdraw therefrom amounts so to be refunded or paid, without regard to the origin of the funds withdraw.

(e) Where any contract entered into by an executive agency or any subcontract under such contract authorizes the proceeds of any sale of property in the custody of the contractor or subcontractor to be credited to the price or cost of the work covered by such contract or subcontract, the proceeds of any such sale shall be credited in accordance with the contract or subcontract.

(f) Any executive agency entitled to receive cash under any contract covering the lease, sale or other disposition of surplus property may in its discretion accept in lieu of cash, any property determined by the President to be strategic or critical material at the prevailing market price thereof at the time the cash payment or payments became or become due.

(g) Where credit has been extended in connection with any disposition of surplus property under this title or by War Assets Administration (or its predecessor agencies) under the Surplus Property Act of 1944, or where such disposition has been by lease or permit, the Administrator shall administer and manage such credit, lease, or permit, and any security therefor, and may enforce, adjust, and settle any right of the Government with respect thereto in such manner and upon such terms as he deems in the best interest of the Government.

(h)(1) If the Secretary of a military department determines that real property, and improvements thereon, under the control of that department (other than property at a military installation designated for closure or realignment) is excess to the needs of that department, the Secretary of Defense shall provide that the property be made available for transfer without reimbursement to the other military departments within the Department of Defense. If the property is not transferred to another military department, the Secretary of the military department concerned shall request the

Administrator to transfer or dispose of such property in accordance with the provisions of this Act, section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)), or other applicable law.

(2) The Administrator shall deposit any proceeds (less expenses of transferring or disposing of the property as provided in subsection (b)) in a special account in the Treasury of the United States. The amount deposited in such account with respect to the transfer or disposal of any such property shall be available, to the extent provided in appropriation Acts, as follows:

(A) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the property is located.

(B) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department that had jurisdiction over the property before it was disposed of or transferred.

(3) As part of the annual request for authorizations of appropriations to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, the Secretary of Defense shall include an accounting of each transfer and disposal made in accordance with this subsection during the fiscal year preceding the fiscal year in which the request is made, including a detailed explanation of each such transfer and disposal and of the use of the proceeds received from it by the Department of Defense.

(4) This subsection does not apply to damaged or deteriorated military family housing facilities conveyed under section 2854a of title 10, United States Code.

(5) For purposes of this subsection, the term "military installation" shall have the meaning given that term in section 2687(e)(1) of title 10, United States Code.

7. PROVISIONS RELATED TO THE CLOSURE AND TRANSFER OF DEPARTMENT OF ENERGY FACILITIES

a. Projects to Accelerate Closure Activities at Defense Nuclear Facilities

(Section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201, approved Sept. 23, 1996))

SEC. 3143. [42 U.S.C. 7274n] PROJECTS TO ACCELERATE CLOSURE ACTIVITIES AT DEFENSE NUCLEAR FACILITIES.

(a) IN GENERAL.—The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) PURPOSE.—The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) ELIGIBLE PROJECTS.—(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.

(d) PROGRAM ADMINISTRATION.—The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) SELECTION OF PROJECTS.—(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.

(f) MULTIYEAR CONTRACTS.—Notwithstanding section 304B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(d)), the Secretary of Energy may enter into multiyear contracts to carry out projects selected under this section for up to 10 program years.

(g) FUNDING.—(1) In the budget submitted to Congress under section 1105(a) of title 31, United States Code, each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) ANNUAL REPORT.—The Secretary of Energy shall submit each year to Congress a report on the status of each closure-accel-

eration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) DURATION OF PROGRAM.—No closure-acceleration project selected under this section may be carried out after the expiration of the 15-year period beginning on the date of the enactment of this Act.

(j) SAVINGS PROVISION.—Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

---

b. Transfers of Real Property at Certain Department of Energy Facilities

(Section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85))

SEC. 3158. [42 U.S.C. 7274q] TRANSFERS OF REAL PROPERTY AT CERTAIN DEPARTMENT OF ENERGY FACILITIES.

(a) TRANSFER REGULATIONS.—(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) INDEMNIFICATION.—(1) Except as provided in paragraph (3) and subject to subsection (c), in the sale or lease of real property pursuant to the regulations prescribed under subsection (a), the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Secretary has authority to provide indem-

nification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(c) CONDITIONS.—(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;

(B) furnishes to the Secretary copies of pertinent papers received by the person or entity;

(C) furnishes evidence or proof of the claim;

(D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and

(E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) AUTHORITY OF SECRETARY OF ENERGY.—(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1), the Secretary may settle or defend the claim on behalf of that person or entity.

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(f) DEFINITIONS.—In this section:

(1) The term "defense nuclear facility" has the meaning provided by the term "Department of Energy defense nuclear

facility" in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

(2) The terms "hazardous substance", "release", and "pollutant or contaminant" have the meanings provided by section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

c. Employee Incentives for Employees at Closure Project Facilities

(Section 3136 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A–458)

SEC. 3136. [42 U.S.C. 7274n note] EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE PROJECT FACILITIES.

(a) AUTHORITY TO PROVIDE INCENTIVES.—Notwithstanding any other provision of law, the Secretary of Energy may provide to any eligible employee of the Department of Energy one or more of the incentives described in subsection (d).

(b) ELIGIBLE EMPLOYEES.—An individual is an eligible employee of the Department of Energy for purposes of this section if the individual—

(1) has worked continuously at a closure facility for at least two years;

(2) is an employee (as that term is defined in section 2105(a) of title 5, United States Code);

(3) has a fully satisfactory or equivalent performance rating during the most recent performance period and is not subject to an adverse notice regarding conduct; and

(4) meets any other requirement or condition under subsection (d) for the incentive which is provided the employee under this section.

(c) CLOSURE FACILITY DEFINED.—For purposes of this section, the term "closure facility" means a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n).

(d) INCENTIVES.—The incentives that the Secretary may provide under this section are the following:

(1) The right to accumulate annual leave provided by section 6303 of title 5, United States Code, for use in succeeding years until it totals not more than 90 days, or not more than 720 hours based on a standard work week, at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, except that—

(A) any annual leave that remains unused when an employee transfers to a position in a department or agency of the Federal Government shall be liquidated upon the transfer by payment to the employee of a lump sum for leave in excess of 30 days, or in excess of 240 hours based on a standard work week; and

(B) upon separation from service, annual leave accumulated under this paragraph shall be treated as any other accumulated annual leave is treated.

(2) The right to be paid a retention allowance in a lump sum in compliance with paragraphs (1) and (2) of section 5754(b) of title 5, United States Code, if the employee meets the requirements of section 5754(a) of that title, except that the retention allowance may exceed 25 percent, but may not be more than 30 percent, of the employee's rate of basic pay.

(e) AGREEMENT.—An eligible employee of the Department of Energy provided an incentive under this section shall enter into an agreement with the Secretary to remain employed at the closure facility at which the employee is employed as of the date of the agreement until a specific date or for a specific period of time.

(f) VIOLATION OF AGREEMENT.—(1) Except as provided under paragraph (3), an eligible employee of the Department of Energy who violates an agreement under subsection (e), or is dismissed for cause, shall forfeit eligibility for any incentives under this section as of the date of the violation or dismissal, as the case may be.

(2) Except as provided under paragraph (3), an eligible employee of the Department of Energy who is paid a retention allowance under subsection (d)(2) and who violates an agreement under subsection (e), or is dismissed for cause, before the end of the period or date of employment agreed upon under such agreement shall refund to the United States an amount that bears the same ratio to the aggregate amount so paid to or received by the employee as the unserved part of such employment bears to the total period of employment agreed upon under such agreement.

(3) The Secretary may waive the applicability of paragraph (1) or (2) to an employee otherwise covered by such paragraph if the Secretary determines that there is good and sufficient reason for the waiver.

(g) REPORT.—The Secretary shall include in each report on a closure project under section 3143(h) of the National Defense Authorization Act for Fiscal Year 1997 a report on the incentives, if any, provided under this section with respect to the project for the period covered by such report.

(h) AUTHORITY WITH RESPECT TO HEALTH COVERAGE.—[Omitted-Amendment]

(i) AUTHORITY WITH RESPECT TO VOLUNTARY SEPARATIONS.—(1) The Secretary may—

(A) separate from service any employee at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n) who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary determines that such par-

ticipation would impair the performance of the mission of the Department of Energy.

(j) TERMINATION.—The authority to provide incentives under this section terminates on March 31, 2007.

8. ARMED FORCES RETIREMENT HOME

a. Armed Forces Retirement Home Act of 1991

(Title XV of Public Law 101–510; Nov. 5, 1990)

TITLE XV—ARMED FORCES RETIREMENT HOME [1]

Sec. 1501. Short title.
Sec. 1502. Definitions.

PART A—ESTABLISHMENT AND OPERATION OF RETIREMENT HOME

Sec. 1511. Establishment of the Armed Forces Retirement Home.
Sec. 1512. Residents of Retirement Home.
Sec. 1513. Services provided residents.
Sec. 1514. Fees paid by residents.
Sec. 1515. Composition and operation of Retirement Home Board.
Sec. 1516. Duties of Retirement Home Board.
Sec. 1517. Directors and staff.
Sec. 1518. Inspection by Inspector General of the Department of Defense.
Sec. 1519. Retirement Home Trust Fund.
Sec. 1520. Disposition of effects of deceased persons; unclaimed property.
Sec. 1521. Payment of residents for services.
Sec. 1522. Authority to accept certain uncompensated services.
Sec. 1523. Preservation of historic buildings and grounds at United States Soldiers' and Airmen's Home.
Sec. 1524. Conditional supervisory control of Retirement Home Board by Secretary of Defense.

PART B—TRANSITIONAL PROVISIONS

Sec. 1531. Transfer of trust funds relating to the Naval Home and the Soldiers' and Airmen's Home.
Sec. 1532. Repeal of provisions relating to the Naval Home and the United States Soldiers' and Airmen's Home.
Sec. 1533. Conforming amendments.

PART C—EFFECTIVE DATE AND AUTHORIZATION OF APPROPRIATIONS

Sec. 1541. Effective date.
Sec. 1542. Authorization of appropriations for the United States Soldiers' and Airmen's Home.

TITLE XV—ARMED FORCES RETIREMENT HOME

SEC. 1501. [24 U.S.C 401 note] SHORT TITLE

This title may be cited as the "Armed Forces Retirement Home Act of 1991".

SEC. 1502. [24 U.S.C. 401] DEFINITIONS

For purposes of this title:

(1) The term "Retirement Home" means the Armed Forces Retirement Home established under section 1511(a).

[1] The table of contents is not part of the Act but is added for the convenience of the reader.

(2) The term "Retirement Home Board" means the Armed Forces Retirement Home Board.

(3) The term "Local Board" means a Board of Trustees established for each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes.

(4) The term "Director" means a Director of the Armed Forces Retirement Home appointed under section 1517(a).

(5) The term "Fund" means the Armed Forces Retirement Home Trust Fund established under section 1519(a).

(6) The term "Armed Forces" does not include the Coast Guard when it is not operating as a service in the Navy.

(7) The term "chief personnel officers" means—

(A) the Deputy Chief of Staff for Personnel of the Army;

(B) the Chief of Naval Personnel;

(C) the Deputy Chief of Staff, Manpower and Personnel of the Air Force; and

(D) the Deputy Commandant of the Marine Corps with responsibility for personnel matters.

(8) The term "senior noncommissioned officers" means the following:

(A) The Sergeant Major of the Army.

(B) The Master Chief Petty Officer of the Navy.

(C) The Chief Master Sergeant of the Air Force.

(D) The Sergeant Major of the Marine Corps.

Part A—Establishment and Operation of Retirement Home

SEC. 1511. [24 U.S.C. 411] ESTABLISHMENT OF THE ARMED FORCES RETIREMENT HOME

(a) INCLUSION OF EXISTING HOMES.—The United States Soldiers' and Airmen's Home and the Naval Home are hereby incorporated into an independent establishment in the Executive branch of the Federal Government to be known as the Armed Forces Retirement Home.

(b) PURPOSE.—The purpose of the Retirement Home is to provide, through the United States Soldiers' and Airmen's Home and the Naval Home, a residence and related services for certain retired and former members of the Armed Forces.

(c) OPERATION.—Each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes shall be operated by a Director under the overall supervision of the Armed Forces Retirement Home Board.

(d) PROPERTY AND FACILITIES.—(1) The Retirement Home shall consist of such property and facilities as may be transferred to the Retirement Home or acquired by the Retirement Home Board for inclusion in the Retirement Home.

(2) On the effective date specified in section 1541(a), the property and facilities known and operated as the Naval Home and the United States Soldiers' and Airmen's Home shall be transferred to, and made a part of, the Retirement Home.

(e) DEPARTMENT OF DEFENSE SUPPORT.—The Secretary of Defense may make available to the Retirement Home, on a nonreimbursable basis, administrative support and office services,

legal and policy planning assistance, access to investigative facilities of the Inspector General of the Department of Defense and of the military departments, and any other support necessary to enable the Retirement Home to carry out its functions under this Act.

(f) ACCREDITATION.—The Retirement Home Board shall endeavor to secure for each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes the accreditation of that facility by a nationally recognized civilian accrediting organization, such as the Continuing Care Accreditation Commission and the Joint Commission for Accreditation of Health Organizations.

SEC. 1512. [24 U.S.C. 412] RESIDENTS OF RETIREMENT HOME

(a) PERSONS ELIGIBLE TO BE RESIDENTS.—Except as provided in subsection (b), the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:

(1) Persons who—

(A) are 60 years of age or over; and

(B) were discharged or released from service in the Armed Forces under honorable conditions after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Retirement Home Board to be incapable of earning a livelihood because of a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who—

(A) served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under section 310 of title 37, United States Code;

(B) were discharged or released from service in the Armed Forces under honorable conditions; and

(C) are determined under rules prescribed by the Retirement Home Board to be incapable of earning a livelihood because of injuries, disease, or disability.

(4) Persons who—

(A) served in a women's component of the Armed Forces before the enactment of the Women's Armed Services Integration Act of 1948; and

(B) are determined under rules prescribed by the Retirement Home Board to be eligible for admission because of compelling personal circumstances.

(b) PERSONS INELIGIBLE TO BE RESIDENTS.—A person described in subsection (a) who has been convicted of a felony or is not free of drug, alcohol, or psychiatric problems shall be ineligible to become a resident of the Retirement Home.

(c) ACCEPTANCE.—To apply for acceptance as a resident of a facility of the Retirement Home, a person eligible to be a resident shall submit to the Director of that facility an application in such form and containing such information as the Retirement Home Board may require.

(d) PRIORITIES FOR ACCEPTANCE.—The Retirement Home Board shall establish a system of priorities for the acceptance of residents so that the most deserving applicants will be accepted whenever the number of eligible applicants is greater than the Retirement Home can accommodate.

(e) EFFECT OF DEPARTURE.—A resident of the Retirement Home who leaves the Retirement Home for more than 45 consecutive days (other than for inpatient medical care) shall be required to reapply for acceptance as a resident.

(f) APPLICATION OF ELIGIBILITY REQUIREMENTS TO CURRENT RESIDENTS OF THE NAVAL HOME AND THE SOLDIERS' AND AIRMEN'S HOME.—Residents of the Naval Home and the United States Soldiers' and Airmen's Home as of the effective date specified in section 1541(a)—

(1) shall not be required to apply for acceptance as residents of the Retirement Home; and

(2) shall become residents of the Retirement Home on that date.

SEC. 1513. [24 U.S.C. 413] SERVICES PROVIDED RESIDENTS

(a) SERVICES PROVIDED.—Except as provided in subsection (b), a resident of the Retirement Home shall receive the services authorized by the Retirement Home Board.

(b) MEDICAL AND DENTAL CARE.—The Retirement Home shall provide for the overall health care needs of residents in a high quality and cost-effective manner, including on site primary care, medical care, and a continuum of long-term care services. Secondary and tertiary hospital care for residents that is not available at a facility maintained as a separate establishment of the Retirement Home shall, to the extent available, be obtained by agreement with the Secretary of Veterans Affairs or the Secretary of Defense in a facility administered by such Secretary. The Retirement Home shall not be responsible for the costs incurred for such care by a resident of the Retirement Home who uses a private medical facility for such care. The Retirement Home may not construct an acute care facility.

SEC. 1514. [24 U.S.C. 414] FEES PAID BY RESIDENTS

(a) MONTHLY FEES.—The Directors shall collect from each resident of the Retirement Home a monthly fee.

(b) DEPOSIT OF FEES.—The Directors shall deposit fees collected under subsection (a) in the Armed Forces Retirement Home Trust Fund.

(c) FIXING FEES.—(1) The Retirement Home Board shall from time to time fix the fee required by subsection (a) on the basis of the financial needs of the Retirement Home and the ability of the residents to pay.

(2) The fee shall be fixed as a percentage of the monthly income and monthly payments (including Federal payments) received by a resident, subject to such adjustments in the fee as the Retirement Home Board may make under paragraph (1). The percentage shall be the same for each establishment of the Retirement Home.

(d) APPLICATION OF FEES.—Subject to such adjustments in the fee as the Retirement Home Board may make under subsection (c), each resident of the Retirement Home shall be required to pay a

monthly fee equal to the amount determined by multiplying the total amount of all monthly income and monthly payments (including Federal payments) received by the resident by a percentage as follows:

(1) In the case of a permanent health care resident—

(A) in fiscal year 1998, 35 percent;

(B) in fiscal year 1999, 45 percent; and

(C) in fiscal year 2000, 65 percent.

(2) In the case of a resident who is not a permanent health care resident—

(A) in fiscal year 1998, 30 percent;

(B) in fiscal year 1999, 35 percent; and

(C) in fiscal year 2000, 40 percent.

* * * * * * *

SEC. 1515. [24 U.S.C. 415] COMPOSITION AND OPERATION OF RETIREMENT HOME BOARD

(a) ESTABLISHMENT.—There is hereby established the Armed Forces Retirement Home Board. The Retirement Home Board shall exercise policy oversight over the Retirement Home and oversee the activities of any Local Boards of trustees.

(b) MEMBERS.—The Retirement Home Board shall consist of not less than 16 members who shall be appointed by the Secretary of Defense, unless otherwise indicated, as follows:

(1) One representative from the office of the Assistant Secretary of Defense (Force Management and Personnel).

(2) One representative from the Department of Defense Comptroller's office.

(3) One representative from the office of the Assistant Secretary of Defense (Health Affairs).

(4) One representative from the office of the General Counsel of the Department of Defense.

(5) Two persons who are experts in the operations of retirement homes and who are not officers or employees of the United States.

(6) Two persons who are gerontologists and who are not officers or employees of the United States.

(7) Two persons who are personnel chiefs of the Armed Forces.

(8) Two persons who are senior noncommissioned officers of the Armed Forces.

(9) One representative from the Office of Management and Budget who shall be designated by the Director of the Office of Management and Budget.

(10) One representative from a national noncommissioned officer association or a military retiree council who shall be a nonvoting member of the Board.

(11) One representative of the Secretary of Veterans Affairs who shall be designated by that Secretary.

(12) One officer or employee of the Department of Health and Human Services who shall be designated by the Secretary of Health and Human Services.

(c) LOCAL BOARDS.—Each establishment of the Retirement Home shall have a Board of trustees which shall exercise oper-

ational oversight over the respective facility and provide reports to the Retirement Home Board at least twice annually. Each Local Board shall consist of at least 11 members appointed by the Secretaries of the military departments. The Local Boards shall consist of the following:

(1) One person who is a civilian expert in nursing home or retirement home administration and financing from the geographical area of each facility.

(2) One person who is a civilian expert in gerontology from the geographical area of each facility.

(3) One person who is a service expert in financial management.

(4) One representative from the Department of Veterans Affairs regional office nearest in proximity to each facility who shall be designated by the Secretary of Veterans Affairs.

(5) One representative from the resident advisory committee or council of the respective facility who shall be a nonvoting member.

(6) One enlisted representative of the Services' Retiree Advisory Council.

(7) The senior noncommissioned officer of an Armed Force.

(8) One senior representative from the military hospital nearest in proximity to each facility.

(9) One senior representative from the Judge Advocate General's Corps from one of the Armed Services.

(10) The director of the respective facility who shall be a nonvoting member.

(11) One senior representative of one of the chief personnel officers of the Armed Services.

(d) CHAIRMEN.—(1)(A) The Secretary of Defense shall select one of the members of the Retirement Home Board to serve as chairman. The term of office of the chairman shall be five years. At the discretion of the Secretary a chairman may serve a second five-year term of office as chairman.

(B) The chairman shall act as the chief executive officer of the Armed Forces Retirement Home and while so acting shall not be responsible to the Secretary of Defense or to the Secretaries of the military departments for direction and management of the Retirement Home or each facility maintained as a separate facility of the Retirement Home.

(C) The chairman may appoint, in addition to such ad hoc committees as the chairman determines to be appropriate, a standing executive committee to act for, and in the name of, the Retirement Home Board at such times and on such matters as the chairman considers necessary to expedite the efficient and timely management of each facility maintained as a separate facility of the Retirement Home.

(D) The chairman may appoint an administrative staff to assist the chairman in the performance of the duties of the chairman. The chairman shall determine the rates of pay applicable to such staff, except that a staff member who is a member of the Armed Forces on active duty or who is a full-time officer or employee of the United States shall receive no additional pay by reason of service on the administrative staff.

(2) The Secretaries of the military departments shall select the chairman for each Local Board from the members of that Board. The term of office of the chairman of a Local Board shall be three years.

(e) TERMS.—(1) Except as provided in subsection (f), the term of office of each member of the Retirement Home Board and each Local Board shall be five years.

(2) A member whose term of office has expired may continue to serve until the successor for the member is appointed or designated.

(3) The Chairman of the Retirement Home Board may appoint a member of the Retirement Home Board for a second consecutive term. The Chairman of a Local Board may appoint a member of that Local Board for a second consecutive term.

(f) EARLY EXPIRATION OF TERM.—A member of the Armed Forces or Federal civilian employee who is appointed as a member of the Retirement Home Board or a Local Board may serve as a board member only so long as the member of the Armed Forces or Federal civilian employee is assigned to or serving in the duty position that gave rise to the appointment as a board member.

(g) VACANCIES.—(1) A vacancy in the Retirement Home Board or a Local Board shall be filled in the manner in which the original appointment or designation was made.

(2) A member appointed or designated to fill a vacancy occurring before the end of the term of the predecessor of the member shall be appointed or designated, as the case may be, for the remainder of the term for which the predecessor was appointed.

(3) A vacancy in the Retirement Home Board or a Local Board shall not affect its authority to perform its duties.

(h) COMPENSATION.—(1) Except as provided in paragraph (2), members of the Retirement Home Board and members of the Local Boards shall—

(A) be provided a stipend consistent with the daily government consultant fee for each day in which the member is engaged in the performance of services for the Retirement Home Board or a Local Board; and

(B) while away from home or regular place of business in the performance of services for the Retirement Home Board or a Local Board, be allowed travel expenses (including per diem in lieu of subsistence) in the same manner as a person employed intermittently in Government under sections 5701 through 5707 of title 5, United States Code.

(2) A member of the Retirement Home Board or a Local Board who is a member of the Armed Forces on active duty or a full-time officer or employee of the United States shall receive no additional pay by reason of service on the Retirement Home Board or a Local Board.

(i) MEETINGS.—(1) The Retirement Home Board shall meet twice a year, or at more frequent intervals, at the call of the chairman or a majority of the members.

(2) The first meeting of the Retirement Home Board shall be held during the 30-day period beginning on the later of—

(A) the effective date specified in section 1541(a); and

(B) the date on which the last of the five members required by subsection (b) to be appointed is first appointed.

SEC. 1516. [24 U.S.C. 416] DUTIES OF RETIREMENT HOME BOARD

(a) OVERALL OPERATION OF THE RETIREMENT HOME.—The Retirement Home Board shall be responsible for the overall operation of the Retirement Home. As part of such responsibilities, the Retirement Home Board shall perform the following duties:

(1) Issue and ensure compliance with appropriate rules for the operation of the Retirement Home.

(2) Periodically visit, and inspect the operation of, the facilities of the Retirement Home.

(3) Periodically examine and audit the accounts of the Retirement Home.

(4) Establish such advisory bodies as the Retirement Home Board considers to be necessary.

(b) SPECIAL DUTIES OF SPECIFIC MEMBERS.—The Retirement Home Board shall assign specific members of the Retirement Home Board appointed under section 1515(b) to oversee the operations of each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes.

(c) ACQUISITION OF REAL PROPERTY.—The Retirement Home Board may acquire, for the benefit of the Retirement Home, property and facilities for inclusion in the Retirement Home.

(d) LIMITATION ON THE DISPOSAL OF REAL PROPERTY.—(1) Real property of the Retirement Home may not be disposed of by the Retirement Home Board by sale or otherwise unless the disposal of the property is specifically authorized by law.

(2) In any case in which any real property is sold by the Retirement Home Board, the Board shall deposit moneys received from the sale of the property in the Armed Forces Retirement Home Trust Fund.

(e) GIFTS.—(1) The Retirement Home Board may accept gifts of money, property, and facilities on behalf of the Retirement Home.

(2) Monies received as gifts, or realized from the disposition of property and facilities received as gifts, shall be deposited in the Fund.

(f) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year, the Retirement Home Board shall submit to the Secretary of Defense, for transmission to Congress, a report describing the financial and other affairs of the Retirement Home for that fiscal year.

SEC. 1517. [24 U.S.C. 417] DIRECTORS AND STAFF

(a) APPOINTMENT AND QUALIFICATIONS.—(1) The Secretary of Defense shall appoint a Director for each separate establishment of the Retirement Home.

(2) The Director of the United States Soldiers' and Airmen's Home shall be appointed from among persons recommended by the Retirement Home Board who—

(A) are not officers of the Armed Forces on active duty; and

(B) meet the requirements of paragraph (4).

(3) The Director, and any Deputy Director, of the Naval Home shall be appointed by the Secretary of Defense from among persons recommended by the Secretaries of the military departments who—

(A) in the case of the position of Director, are commissioned officers of the Armed Forces serving on active duty in a pay grade above O–5;

(B) in the case of the position of Deputy Director, are commissioned officers of the Armed Forces serving on active duty in a pay grade above O–4; and

(C) meet the requirements of paragraph (4).

(4) Each Director shall have appropriate leadership and management skills, an appreciation and understanding of the culture and norms associated with military service, and significant military background.

(5) Each Director shall be required to pursue a course of study to receive certification as a retirement facilities director by an appropriate civilian certifying organization if the Director is not so certified at the time of appointment.

(b) APPLICATION OF CIVIL SERVICE LAWS TO APPOINTMENT AND FIXING PAY.—The Secretary of Defense may appoint the Director referred to in subsection (a) and Deputy Directors for the Retirement Home without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(c) TERMS OF DIRECTORS.—(1) The term of office of the Director of the United States Soldiers' and Airmen's Home shall be five years. The Director may be reappointed for one additional term upon the completion of the first term of office unless the Director has failed to successfully complete a course of study to receive certification as a retirement facilities director.

(2) The Director and the Deputy Director of the Naval Home shall serve at the pleasure of the Secretary of Defense.

(d) DUTIES OF DIRECTORS.—(1) A Director shall be responsible for the day-to-day operation of the facility of the Retirement Home for which the Director is appointed, including the acceptance of applicants to be residents of that facility.

(2) The Director shall keep accurate and complete records of the operations of that facility of the Retirement Home.

(e) STAFF.—(1) A Director, subject to the approval of the Retirement Home Board, may appoint and fix the pay of such principal staff as the Director considers appropriate to assist the Director in operating the facility of the Retirement Home for which the Director is appointed.

(2) The staff shall include persons with experience and expertise in the operation and management of retirement homes and in the provision of long-term medical care for older persons.

(3) The Director may exempt four physicians employed at the Retirement Home from the provisions of subsections (a), (b), and (c) of section 5532 of title 5, United States Code, if the Director determines that the exemption is necessary to recruit or retain well-qualified physicians for the Retirement Home. An exemption granted under this section shall apply to the retired pay of the physician payable for the first month after the month in which the exemption is granted and shall terminate upon any break in employment with the Retirement Home of three days or more.

(f) ANNUAL EVALUATION OF DIRECTORS.—The Chairman of the Retirement Home Board shall annually evaluate the performance of the Directors and shall make such recommendations to the Secretary of Defense as the Chairman considers appropriate in light of the evaluation.

(g) DEFINITIONS.—In this section:

(1) The term "United States Soldiers' and Airmen's Home" means the separate facility of the Retirement Home that is known as the United States Soldiers' and Airmen's Home.

(2) The term "Naval Home" means the separate facility of the Retirement Home that is known as the Naval Home.

SEC. 1518. [24 U.S.C. 418] INSPECTION OF RETIREMENT HOME.

(a) TRIENNIAL INSPECTION.—Every three years the Inspector General of a military department shall inspect the Retirement Home, including the records of the Retirement Home.

(b) ALTERNATING DUTY AMONG INSPECTORS GENERAL.—The duty to inspect the Retirement Home shall alternate among the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force on such schedule as the Secretary of Defense shall direct.

(c) REPORTS.—Not later than 45 days after completing an inspection under subsection (a), the Inspector General carrying out the inspection shall submit to the Retirement Home Board, the Secretary of Defense, and Congress a report describing the results of the inspection and containing such recommendations as the Inspector General considers appropriate.

SEC. 1519. [24 U.S.C. 419] RETIREMENT HOME TRUST FUND

(a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a trust fund to be known as the Armed Forces Retirement Home Trust Fund. The Fund shall consist of the following:

(1) Such amounts as may be transferred to the Fund.

(2) Moneys deposited in the Fund by the Retirement Home Board realized from gifts or from the disposition of property and facilities.

(3) Amounts deposited in the Fund as monthly fees paid by residents of the Retirement Home under section 1514.

(4) Amounts of fines and forfeitures deposited in the Fund under section 2772 of title 10, United States Code.

(5) Amounts deposited in the Fund as deductions from the pay of enlisted members, warrant officers, and limited duty officers under section 1007(i) of title 37, United States Code.

(6) Interest from investments made under subsection (c).

(b) AVAILABILITY AND USE OF FUND.—Amounts in the Fund shall be available solely for the operation of the Retirement Home.

(c) INVESTMENTS.—The Secretary of the Treasury may invest in obligations issued or guaranteed by the United States any monies in the Fund that the Director determines are not currently needed to pay for the operation of the Retirement Home.

(d) TRANSITIONAL ACCOUNTS.—(1) During the period beginning on the date of the enactment of this Act and ending on September 30, 1994, the Fund shall contain a separate account for each establishment of the Retirement Home. During that period, contribu-

tions shall be collected under subsection (a) for the account of the Naval Home for the purpose of achieving a trust fund five times the estimated annual operating budget of the Naval Home.

(2) Beginning on the date of the enactment of this Act, funds required for the operation of the United States Soldiers' and Airmen's Home shall be drawn from the appropriate account. Beginning on October 1, 1991, funds required for the operation of the Naval Home shall be drawn from the account of the Naval Home.

(3) During the period beginning on the date of the enactment of this Act and ending on September 30, 1994—

(A) amounts collected as monthly fees paid by residents of the Naval Home and amounts referred to in subsections (a)(4) and (a)(5) derived from enlisted members, warrant officers, and limited duty officers of the Navy, Marine Corps, and Coast Guard shall be credited to the account relating to that establishment; and

(B) amounts collected as monthly fees paid by residents of the United States Soldiers' and Airmen's Home and amounts referred to in subsections (a)(4) and (a)(5) derived from members and warrant officers of the Army and Air Force shall be credited to the account relating to that establishment.

SEC. 1520. [24 U.S.C. 420] DISPOSITION OF EFFECTS OF DECEASED PERSONS; UNCLAIMED PROPERTY

(a) DISPOSITION OF EFFECTS OF DECEASED PERSONS.—The Director of each facility that is maintained as a separate establishment of the Retirement Home shall safeguard and dispose of the estate and personal effects of deceased residents, including effects delivered to such facility under sections 4712(f) and 9712(f) of title 10, United States Code, and shall ensure the following:

(1) A will or other instrument of a testamentary nature involving property rights executed by a resident shall be promptly delivered, upon the death of the resident, to the proper court of record.

(2) If a resident dies intestate and the heirs or legal representative of the deceased cannot be immediately ascertained, the Director shall retain all property left by the decedent for a three-year period beginning on the date of the death. If entitlement to such property is established to the satisfaction of the Director at any time during the three-year period, the Director shall distribute the decedent's property, in equal prorata shares when multiple beneficiaries have been identified, to the highest following categories of identified survivors (listed in the order of precedence indicated):

(A) The surviving spouse or legal representative.
(B) The children of the deceased.
(C) The parents of the deceased.
(D) The siblings of the deceased.
(E) The next-of-kin of the deceased.

(b) SALE OF EFFECTS.—(1)(A) If the disposition of the estate of a resident of the Retirement Home cannot be accomplished under subsection (a)(2) or if a resident dies testate and the nominated fiduciary, legatees, or heirs of the resident cannot be immediately ascertained, the entirety of the deceased resident's domiciliary estate and the entirety of any ancillary estate that is unclaimed at

the end of the three-year period beginning on the date of the death of the resident shall escheat to the Retirement Home.

(B) Upon the sale of any such unclaimed estate property, the proceeds of the sale shall be deposited in the Retirement Home Trust Fund.

(C) If a personal representative or other fiduciary is appointed to administer a deceased resident's estate and the administration is completed before the end of such three-year period, the balance of the entire net proceeds of the estate, less expenses, shall be deposited directly in the Retirement Home Trust Fund. The heirs or legatees of the deceased resident may file a claim made with the Secretary of Defense to reclaim such proceeds. A determination of the claim by the Secretary shall be subject to judicial review exclusively by the United States Court of Federal Claims.

(2)(A) The Director of a facility maintained as a separate establishment of the Retirement Home may designate an attorney to serve as attorney or agent for the facility in any probate proceeding in which the Retirement Home may have a legal interest as nominated fiduciary, testamentary legatee, escheat legatee, or in any other capacity.

(B) An attorney designated under this paragraph may, in the domiciliary jurisdiction of the deceased resident and in any ancillary jurisdiction, petition for appointment as fiduciary. The attorney shall have priority over any petitioners (other than the deceased resident's nominated fiduciary, named legatees, or heirs) to serve as fiduciary. In a probate proceeding in which the heirs of an intestate deceased resident cannot be located and in a probate proceeding in which the nominated fiduciary, legatees, or heirs of a testate deceased resident cannot be located, the attorney shall be appointed as the fiduciary of the deceased resident's estate.

(3) The designation of an employee or representative of a facility of the Retirement Home as personal representative of the estate of a resident of the Retirement Home or as a legatee under the will or codicil of the resident shall not disqualify an employee or staff member of that facility from serving as a competent witness to a will or codicil of the resident.

(4) After the end of the three-year period beginning on the date of the death of a resident of a facility, the Director of the facility shall dispose of all property of the deceased resident that is not otherwise disposed of under this subsection, including personal effects such as decorations, medals, and citations to which a right has not been established under subsection (a). Disposal may be made within the discretion of the Director by—

(A) retaining such property or effects for the facility;

(B) offering such items to the Secretary of Veterans Affairs, a State, another military home, a museum, or any other institution having an interest in such items; or

(C) destroying any items determined by the Director to be valueless.

(c) TRANSFER OF PROCEEDS TO THE FUND.—The net proceeds received by the Directors from the sale of effects under subsection (b) shall be deposited in the Fund.

(d) SUBSEQUENT CLAIM.—(1) A claim for the net proceeds of the sale under subsection (b) of the effects of a deceased may be filed

with the Secretary of Defense at any time within six years after the death of the deceased, for action under section 2771 of title 10, United States Code.

(2) A claim referred to in paragraph (1) may not be considered by a court or the Secretary unless the claim is filed within the time period prescribed in such paragraph.

(3) A claim allowed by the Secretary under paragraph (1) shall be certified to the Secretary of the Treasury for payment from the Fund in the amount found due, including any interest relating to the amount. No claim may be allowed or paid in excess of the net proceeds of the estate deposited in the Fund under subsection (c) plus interest.

(e) UNCLAIMED PROPERTY.—In the case of property delivered to the Retirement Home under section 2575 of title 10, United States Code, the Directors shall deliver the property to the owner, the heirs or next of kin of the owner, or the legal representative of the owner, if a right to the property is established to the satisfaction of the Directors within two years after the delivery.

SEC. 1521. [24 U.S.C. 421] PAYMENT OF RESIDENTS FOR SERVICES.

(a) AUTHORITY.—The Chairman of the Armed Forces Retirement Board is authorized to accept for the Armed Forces Retirement Home the part-time or intermittent services of a resident of the Retirement Home, to pay the resident for such services, and to fix the rate of such pay.

(b) EMPLOYMENT STATUS.—A resident receiving pay for services authorized under subsection (a) shall not, by reason of performing such services and receiving pay for such services, be considered as—

(1) receiving the pay of a position or being employed in a position for the purposes of section 5532 of title 5, United States Code; or

(2) being an employee of the United States for any purpose other than—

(A) subchapter I of chapter 81 of title 5, United States Code (relating to compensation for work-related injuries); and

(B) chapter 171 of title 28, United States Code (relating to claims for damages or loss).

(c) DEFINITION.—In subsection (b)(1), the term "position" has the meaning given that term in section 5531 of title 5, United States Code.

SEC. 1522. [24 U.S.C. 422] AUTHORITY TO ACCEPT CERTAIN UNCOMPENSATED SERVICES.

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, United States Code, the Chairman of the Retirement Home Board or the Director of each establishment of the Retirement Home may accept from any person voluntary personal services or gratuitous services unless the acceptance of the voluntary services is disapproved by the Retirement Home Board.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Chairman of the Retirement Home Board or the Director of the establishment ac-

cepting the services shall notify the person of the scope of the services accepted.

(2) The Chairman or Director shall—

(A) supervise the person providing the services to the same extent as that official 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 laws or regulations to provide such services.

(3) A person providing services accepted under subsection (a) may not—

(A) serve in a policymaking position of the Retirement Home; or

(B) be compensated for the services by the Retirement Home.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Chairman of the Retirement Home Board or the Director of an establishment of the Retirement Home may recruit and train persons to provide services authorized to be accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing services accepted under subsection (a) or receiving training under subsection (c), a person 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, United States Code (relating to compensation for work-related injuries).

(B) Chapter 171 of title 28, United States Code (relating to claims for damages or loss).

(2) A person providing services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) only with respect to services that are within the scope of the services accepted.

(3) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5, United States Code (pursuant to this subsection) to a person providing 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 Chairman of the Retirement Board or the Director of the establishment accepting services under subsection (a) may provide for reimbursement of a person for incidental expenses incurred by the person in providing the services accepted under subsection (a). The Chairman or Director shall determine which expenses qualify for reimbursement under this subsection.

SEC. 1523. [24 U.S.C. 423] PRESERVATION OF HISTORIC BUILDINGS AND GROUNDS AT UNITED STATES SOLDIERS' AND AIRMEN'S HOME.

(a) HISTORIC NATURE OF FACILITY.—Congress finds the following:

(1) Four buildings located on six acres of the establishment of the Retirement Home known as the United States Soldiers' and Airmen's Home are included on the National Register of Historic Places maintained by the Secretary of the Interior.

(2) Amounts in the Armed Forces Retirement Home Trust Fund, which consists primarily of deductions from the pay of members of the Armed Forces, are insufficient to both maintain and operate the Retirement Home for the benefit of the residents of the Retirement Home and adequately maintain, repair, and preserve these historic buildings and grounds.

(3) Other sources of funding are available to contribute to the maintenance, repair, and preservation of these historic buildings and grounds.

(b) AUTHORITY TO ACCEPT ASSISTANCE.—The Chairman of the Retirement Home Board and the Director of the United States Soldiers' and Airmen's Home may apply for and accept a direct grant from the Secretary of the Interior under section 101(e)(3) of the National Historic Preservation Act (16 U.S.C. 470a(e)(3)) for the purpose of maintaining, repairing, and preserving the historic buildings and grounds of the United States Soldiers' and Airmen's Home included on the National Register of Historic Places.

(c) REQUIREMENTS AND LIMITATIONS.—Amounts received as a grant under subsection (b) shall be deposited in the Fund, but shall be kept separate from other amounts in the Fund. The amounts received may only be used for the purpose specified in subsection (b).

SEC. 1524. [24 U.S.C. 424] CONDITIONAL SUPERVISORY CONTROL OF RETIREMENT HOME BOARD BY SECRETARY OF DEFENSE.

(a) APPLICABILITY.—This section shall apply only when the deduction authorized by section 1007(i)(1) of title 37, United States Code, to be made from the monthly pay of certain members of the armed forces is equal to $1.00 for each enlisted member, warrant officer, and limited duty officer of the armed forces on active duty.

(b) BOARD AUTHORITY SUBJECT TO SECRETARY'S CONTROL.—The Retirement Home Board shall be subject to the authority, direction, and control of the Secretary of Defense in the performance of the Board's duties under section 1516.

(c) APPOINTMENT OF BOARD MEMBERS.—When an appointment of a member of the Retirement Home Board under section 1515 is not made by the Secretary of Defense, the appointment shall be subject to the approval of the Secretary of Defense.

(d) TERMS OF BOARD MEMBERS.—(1) Notwithstanding section 1515(e)(3), only the Secretary of Defense may appoint a member of the Retirement Home Board for a second consecutive term.

(2) The Secretary of Defense may terminate the appointment of a member of the Retirement Home Board at the pleasure of the Secretary.

(e) RESPONSIBILITY OF CHAIRMAN TO THE SECRETARY.—Notwithstanding section 1515(d)(1)(B), the chairman of the Retirement Home Board shall be responsible to the Secretary of Defense, but

not to the Secretaries of the military departments, for direction and management of the Retirement Home or each facility maintained as a separate facility of the Retirement Home.

Part B—Transitional Provisions

SEC. 1531. [24 U.S.C. 431] TRANSFER OF TRUST FUNDS RELATING TO THE NAVAL HOME AND THE SOLDIERS' AND AIRMEN'S HOME

(a) INITIAL TRANSFER.—(1) On the date of the enactment of this Act [Nov. 5, 1990], all monies in the funds named in paragraph (2) shall be transferred to the appropriate account in the Armed Forces Retirement Home Trust Fund, and those funds shall terminate.

(2) The funds referred to in paragraph (1) are the following:

(A) Soldiers' Home, permanent fund, referred to in paragraph (59) of section 1321(a) of title 31, United States Code.

(B) Soldiers' Home, interest fund, referred to in paragraph (81) of such section.

(C) Personal funds of deceased inmates, Naval Home, referred to in paragraph (5) of such section.

(D) Any new category of funds created for the Naval Home or the United States Soldiers' and Airmen's Home before that date.

(b) SUBSEQUENT TRANSFERS.—After the termination of the funds referred to in subsection (a), any monies that would be deposited into one of those funds but for the termination of that fund under subsection (a) shall be deposited into the Armed Forces Retirement Home Trust Fund.

SEC. 1532. REPEAL OF PROVISIONS RELATING TO THE NAVAL HOME AND THE UNITED STATES SOLDIERS' AND AIRMEN'S HOME

[Omitted—Amendments.]

SEC. 1533. CONFORMING AMENDMENTS

[Omitted—Amendments.]

Part C—Effective Date and Authorization of Appropriations

SEC. 1541. [24 U.S.C. 401 note] EFFECTIVE DATE

(a) IN GENERAL.—Except where otherwise specified, this title and the amendments made by this title shall take effect one year after the date of the enactment of this Act [Nov. 5, 1990].

(b) ESTABLISHMENT OF FUND.—Sections 1519, 1531, and 1533(c)(1) shall take effect on the date of the enactment of this Act.

(c) APPOINTMENT OF BOARD.—The provisions of section 1515 relating to the appointment and designation of members of the Retirement Home Board and Local Boards shall take effect on October 1, 1991.

(d) APPLICABILITY.—Section 1520 of this Act shall apply to the estate of each resident of the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the Naval Home, who dies after November 29, 1989.

SEC. 1542. [24 U.S.C. 441] AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES SOLDIERS' AND AIRMEN'S HOME

There is authorized to be appropriated for fiscal year 1991 from the Soldiers' Home, Permanent Fund, the sum of $53,999,000 for the operation of the United States Soldiers' and Airmen's Home. This section shall take effect on the date of the enactment of this Act.

---

b. Disposal of District of Columbia Tract

(Section 1053 of Public Law 104–201; Sept. 23, 1996)

SEC. 1053. [110 Stat. 2650] DISPOSAL OF TRACT OF REAL PROPERTY IN THE DISTRICT OF COLUMBIA.

(a) DISPOSAL AUTHORIZED.—(1) Notwithstanding title II the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.), title VIII of such Act (40 U.S.C. 531 et seq.), section 501 of the Stewart B. McKinney Homeless Assistance Act [1] (42 U.S.C. 11411), or any other provision of law relating to the management and disposal of real property by the United States, the Armed Forces Retirement Home Board shall convey, by sale or lease, all right, title, and interest of the United States in a parcel of real property, including improvements thereon, consisting of approximately 49 acres located in Washington, District of Columbia, east of North Capitol Street, and recorded as District Parcel 121/19.

(2) The Armed Forces Retirement Home Board shall sell or lease the property described in subsection (a) within 12 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000.

(b) MANNER, TERMS AND CONDITIONS OF DISPOSAL.—(1) The Armed Forces Retirement Home Board shall determine the manner, terms, and conditions for the sale or lease of the real property under subsection (a), except as follows:

(A) Any lease of the real property under subsection (a) shall include an option to purchase.

(B) The conveyance may not involve any form of public/private partnership, but shall be limited to fee-simple sale or long-term lease.

(C) Before conveying the property by sale or lease to any other person or entity, the Board shall provide the Catholic University of America with the opportunity to match or exceed the highest bona fide offer otherwise received for the purchase or lease of the property, as the case may be, and to acquire the property.

(2) As consideration for the real property conveyance under subsection (a), the purchaser selected under paragraph (1) shall pay to the United States an amount equal to the fair market value of the real property at its highest and best economic use, as determined by the Armed Forces Retirement Home Board, based on an independent appraisal. In no event shall the sale or lease of the

---

[1] Section 2 of Public Law 106–400 (114 Stat. 1675) provides that "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

property be for less than the appraised value of the property in its existing condition and on the basis of its highest and best use.

(3) The payment received under paragraph (2) shall be deposited in the Armed Forces Retirement Home Trust Fund in accordance with section 1519(a)(2) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1730; 24 U.S.C. 419(a)(2)).

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Armed Forces Retirement Home Board. The cost of the survey shall be borne by the party or parties to which the property is to be conveyed.

(d) CONGRESSIONAL NOTIFICATION.—(1) Before disposing of real property under subsection (a), the Armed Forces Retirement Home Board shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the proposed disposal. The Board may not dispose of the real property until the later of—

(A) the date that is 60 days after the date on which the notification is received by the committees; or

(B) the date of the next day following the expiration of the first period of 30 days of continuous session of Congress that follows the date on which the notification is received by the committees.

(2) For the purposes of paragraph (1)—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) 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.

9. USE OF NAVAL INSTALLATIONS FOR EMPLOYMENT TRAINING OF NONVIOLENT OFFENDERS

Section 1374 of the National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160; approved Nov. 30, 1993)

SEC. 1374. [10 U.S.C. 5013 note] USE OF NAVAL INSTALLATIONS TO PROVIDE EMPLOYMENT TRAINING TO NONVIOLENT OFFENDERS IN STATE PENAL SYSTEMS.

(a) DEMONSTRATION PROJECT AUTHORIZED.—The Secretary of the Navy may conduct a demonstration project to test the feasibility of using Navy facilities to provide employment training to nonviolent offenders in a State penal system prior to their release from incarceration. The demonstration project shall be limited to not more than three military installations under the jurisdiction of the Secretary.

(b) SOURCES OF TRAINING.—The Secretary may enter into a cooperative agreement with one or more private, nonprofit organizations for purposes of providing at the military installations included in the demonstration project the prerelease employment training authorized under subsection (a) or may provide such training directly at such installations by agreement with the State concerned.

(c) USE OF FACILITIES.—Under a cooperative agreement entered into under subsection (b), the Secretary may lease or otherwise make available to a nonprofit organization participating in the demonstration project at a military installation included in the demonstration project any real property or facilities at the installation that the Secretary considers to be appropriate for use to provide the prerelease employment training authorized under subsection (a). Notwithstanding section 2667(b)(4) of title 10, United States Code, the use of such real property or facilities may be permitted with or without reimbursement.

(d) ACCEPTANCE OF SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept voluntary services provided by persons participating in the prerelease employment training authorized under subsection (a).

(e) LIABILITY AND INDEMNIFICATION.—(1) The Secretary may not enter into a cooperative agreement under subsection (b) with a nonprofit organization for the participation of that organization in the demonstration project unless the agreement includes provisions that the nonprofit organization shall—

(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of prerelease employment training by the organization under the demonstration project; and

(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from or in connection with the demonstration project.

(2) The Secretary may not enter into an agreement under subsection (b) with the State concerned for the provision of prerelease employment training directly by the Secretary unless the agreement with the State concerned includes provisions that the State shall—

(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of the training except to the extent that the loss or damage results from a wrongful act or omission of Federal Government personnel; and

(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from, or in connection with, the provision of the training except to the extent that the personal injury or property damage results from a wrongful act or omission of Federal Government personnel.

(f) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit to Congress a report evaluating the success of the demonstration project and containing such recommendations with regard to the termination, continuation, or expansion of the demonstration project as the Secretary considers to be appropriate.

10. PURCHASE OF FIRE, SECURITY, POLICE, PUBLIC WORKS, AND UTILITY SERVICES AT CALIFORNIA INSTALLATIONS

Section 816 of the National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337; approved October 5, 1994)

SEC. 816. [108 Stat. 2820] DEMONSTRATION PROJECT ON PURCHASE OF FIRE, SECURITY, POLICE, PUBLIC WORKS, AND UTILITY SERVICES FROM LOCAL GOVERNMENT AGENCIES.

(a) DEMONSTRATION PROJECT.—The Secretary of Defense may conduct a demonstration project at Monterey, California, under which any fire-fighting, security-guard, police, public works, utility, or other municipal services needed for operation of any Department of Defense asset in Monterey County, California, may be purchased from government agencies located within the county of Monterey. The purchase of such services for the demonstration project may be made notwithstanding section 2465 of title 10, United States Code.

(b) EVALUATION OF PROJECT.—Not later than December 31 of each of the years 1997 through 2000, the Secretary of Defense shall submit to Congress a report evaluating the results of the project and making any recommendations the Secretary considers appropriate, including recommendations on whether the purchase authorities used in conducting the project could be used to provide similar services at other locations.

(c) DURATION OF PROJECT.—The authority to purchase or receive services under the demonstration project shall expire on September 30, 2001.

11. DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS

Section 335 of the National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106; approved Feb, 10, 1996)

SEC. 335. [10 U.S.C. 2241 note] DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS.

(a) DEMONSTRATION PROJECT REQUIRED.—(1) The Secretary of Defense shall conduct a demonstration project to evaluate the feasibility of using only nonappropriated funds to support morale, welfare, and recreation programs at military installations in order to facilitate the procurement of property and services for those programs and the management of employees used to carry out those programs.

(2) Under the demonstration project—

(A) procurements of property and services for programs referred to in paragraph (1) may be carried out in accordance with laws and regulations applicable to procurements paid for with nonappropriated funds; and

(B) appropriated funds available for such programs may be expended in accordance with laws applicable to expenditures of nonappropriated funds as if the appropriated funds were nonappropriated funds.

(3) The Secretary shall prescribe regulations to carry out paragraph (2). The regulations shall provide for financial management and accounting of appropriated funds expended in accordance with subparagraph (B) of such paragraph.

(b) COVERED MILITARY INSTALLATIONS.—The Secretary shall select not less than three and not more than six military installations to participate in the demonstration project.

(c) PERIOD OF DEMONSTRATION PROJECT.—The demonstration project shall terminate not later than September 30, 1998.

(d) EFFECT ON EMPLOYEES.—For the purpose of testing fiscal accounting procedures, the Secretary may convert, for the duration of the demonstration project, the status of an employee who carries out a program referred to in subsection (a)(1) from the status of an employee paid by appropriated funds to the status of a nonappropriated fund instrumentality employee, except that such conversion may occur only—

(1) if the employee whose status is to be converted—

(A) is fully informed of the effects of such conversion on the terms and conditions of the employment of that em-

ployee for purposes of title 5, United States Code, and on the benefits provided to that employee under such title; and

(B) consents to such conversion; or

(2) in a manner which does not affect such terms and conditions of employment or such benefits.

(e) REPORTS.—(1) Not later than six months after the date of the enactment of this Act, the Secretary shall submit to Congress an interim report on the implementation of this section.

(2) Not later than December 31, 1998, the Secretary shall submit to Congress a final report on the results of the demonstration project. The report shall include a comparison of—

(A) the cost incurred under the demonstration project in using employees paid by appropriated funds together with nonappropriated fund instrumentality employees to carry out the programs referred to in subsection (a)(1); and

(B) an estimate of the cost that would have been incurred if only nonappropriated fund instrumentality employees had been used to carry out such programs.

12. BASE EFFICIENCY PROJECT AT BROOKS AIR FORCE BASE

Section 136 of the Military Construction Appropriations Act, 2001

(division A of Public Law 106–246; approved July 13, 2000; 114 Stat. 520)

BROOKS AIR FORCE BASE DEVELOPMENT DEMONSTRATION PROJECT

SEC. 136. (a) PURPOSE.—The purpose of this section is to evaluate and demonstrate methods for more efficient operation of military installations through improved capital asset management and greater reliance on the public or private sector for less-costly base support services, where available. The section supersedes, and shall be used in lieu of the authority provided in, section 8168 of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 113 Stat. 1277).

(b) AUTHORITY.—(1) Subject to paragraph (4), the Secretary of the Air Force may carry out at Brooks Air Force Base, Texas, a demonstration project to be known as the "Base Efficiency Project" to improve mission effectiveness and reduce the cost of providing quality installation support at Brooks Air Force Base.

(2) The Secretary may carry out the Project in consultation with the Community to the extent the Secretary determines such consultation is necessary and appropriate.

(3) The authority provided in this section is in addition to any other authority vested in or delegated to the Secretary, and the Secretary may exercise any authority or combination of authorities provided under this section or elsewhere to carry out the purposes of the Project.

(4) The Secretary may not exercise any authority under this section until after the end of the 30-day period beginning on the date the Secretary submits to the appropriate committees of the Congress a master plan for the development of the Base.

(c) EFFICIENT PRACTICES.—(1) The Secretary may convert services at or for the benefit of the Base from accomplishment by military personnel or by Department civilian employees (appropriated fund or non-appropriated fund), to services performed by contract or provided as consideration for the lease, sale, or other conveyance or transfer of property.

(2) Notwithstanding section 2462 of title 10, United States Code, a contract for services may be awarded based on "best value" if the Secretary determines that the award will advance the purposes of a joint activity conducted under the project and is in the best interest of the Department.

(3) Notwithstanding that such services are generally funded by local and State taxes and provided without specific charge to the public at large, the Secretary may contract for public services at or for the benefit of the Base in exchange for such consideration, if any, the Secretary determines to be appropriate.

(4)(A) The Secretary may conduct joint activities with the Community, the State, and any private parties or entities on or for the benefit of the Base.

(B) Payments or reimbursements received from participants for their share of direct and indirect costs of joint activities, including the costs of providing, operating, and maintaining facilities, shall be in an amount and type determined to be adequate and appropriate by the Secretary.

(C) Such payments or reimbursements received by the Department shall be deposited into the Project Fund.

(d) LEASE AUTHORITY.—(1) The Secretary may lease real or personal property located on the Base and not required at other Air Force installations to any lessee upon such terms and conditions as the Secretary considers appropriate and in the interest of the United States, if the Secretary determines that the lease would facilitate the purposes of the Project.

(2) Consideration for a lease under this subsection shall be determined in accordance with subsection (g).

(3) A lease under this subsection—

(A) may be for such period as the Secretary determines is necessary to accomplish the goals of the Project; and

(B) may give the lessee the first right to purchase the property at fair market value if the lease is terminated to allow the United States to sell the property under any other provision of law.

(4)(A) The interest of a lessee of property leased under this subsection may be taxed by the State or the Community.

(B) A lease under this subsection shall provide that, if and to the extent that the leased property is later made taxable by State governments or local governments under Federal law, the lease shall be renegotiated.

(5) The Department may furnish a lessee with utilities, custodial services, and other base operation, maintenance, or support services performed by Department civilian or contract employees, in exchange for such consideration, payment, or reimbursement as the Secretary determines appropriate.

(6) All amounts received from leases under this subsection shall be deposited into the Project Fund.

(7) A lease under this subsection shall not be subject to the following provisions of law:

(A) Section 2667 of title 10, United States Code, other than subsection (b)(1) of that section.

(B) Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b).

(C) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(e) PROPERTY DISPOSAL.—(1) The Secretary may sell or otherwise convey or transfer real and personal property located at the Base to the Community or to another public or private party dur-

ing the Project, upon such terms and conditions as the Secretary considers appropriate for purposes of the Project.

(2) Consideration for a sale or other conveyance or transfer of property under this subsection shall be determined in accordance with subsection (g).

(3) The sale or other conveyance or transfer of property under this subsection shall not be subject to the following provisions of law:

(A) Section 2693 of title 10, United States Code.

(B) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(4) Cash payments received as consideration for the sale or other conveyance or transfer of property under this subsection shall be deposited into the Project Fund.

(f) LEASEBACK OF PROPERTY LEASED OR DISPOSED.—(1) The Secretary may lease, sell, or otherwise convey or transfer real property at the Base under subsections (b) and (e), as applicable, which will be retained for use by the Department or by another military department or other Federal agency, if the lessee, purchaser, or other grantee or transferee of the property agrees to enter into a leaseback to the Department in connection with the lease, sale, or other conveyance or transfer of one or more portions or all of the property leased, sold, or otherwise conveyed or transferred, as applicable.

(2) A leaseback of real property under this subsection shall be an operating lease for no more than 20 years unless the Secretary of the Air Force determines that a longer term is appropriate.

(3)(A) Consideration, if any, for real property leased under a leaseback entered into under this subsection shall be in such form and amount as the Secretary considers appropriate.

(B) The Secretary may use funds in the Project Fund or other funds appropriated or otherwise available to the Department for use at the Base for payment of any such cash rent.

(4) Notwithstanding any other provision of law, the Department or other military department or other Federal agency using the real property leased under a leaseback entered into under this subsection may construct and erect facilities on or otherwise improve the leased property using funds appropriated or otherwise available to the Department or other military department or other Federal agency for such purpose.

(g) CONSIDERATION.—(1) The Secretary shall determine the nature, value, and adequacy of consideration required or offered in exchange for a lease, sale, or other conveyance or transfer of real or personal property or for other actions taken under the Project.

(2) Consideration may be in cash or in-kind or any combination thereof. In-kind consideration may include the following:

(A) Real property.

(B) Personal property.

(C) Goods or services, including operation, maintenance, protection, repair, or restoration (including environmental restoration) of any property or facilities (including non-appropriated fund facilities).

(D) Base operating support services.

(E) Improvement of Department facilities.

(F) Provision of facilities, including office, storage, or other usable space, for use by the Department on or off the Base.

(G) Public services.

(3) Consideration may not be for less than the fair market value.

(h) PROJECT FUND.—(1) There is established on the books of the Treasury a fund to be known as the "Base Efficiency Project Fund" into which all cash rents, proceeds, payments, reimbursements, and other amounts from leases, sales, or other conveyances or transfers, joint activities, and all other actions taken under the Project shall be deposited. Subject to paragraph (2), amounts deposited into the Project Fund shall be available without fiscal year limitation.

(2) To the extent provided in advance in appropriations Acts, amounts in the Project Fund shall be available to the Secretary for use at the base only for operation, base operating support services, maintenance, repair, or improvement of Department facilities, payment of consideration for acquisitions of interests in real property (including payment of rentals for leasebacks), and environmental protection or restoration. The use of such amounts may be in addition to or in combination with other amounts appropriated for these purposes.

(3) Subject to generally prescribed financial management regulations, the Secretary shall establish the structure of the Project Fund and such administrative policies and procedures as the Secretary considers necessary to account for and control deposits into and disbursements from the Project Fund effectively.

(i) FEDERAL AGENCIES.—(1)(A) Any Federal agency, its contractors, or its grantees shall pay rent, in cash or services, for the use of facilities or property at the Base, in an amount and type determined to be adequate by the Secretary.

(B) Such rent shall generally be the fair market rental of the property provided, but in any case shall be sufficient to compensate the Base for the direct and overhead costs incurred by the Base due to the presence of the tenant agency on the Base.

(2) Transfers of real or personal property at the Base to other Federal agencies shall be at fair market value consideration. Such consideration may be paid in cash, by appropriation transfer, or in property, goods, or services.

(3) Amounts received from other Federal agencies, their contractors, or grantees, including any amounts paid by appropriation transfer, shall be deposited in the Project Fund.

(j) REPORTS TO CONGRESS.—(1) Section 2662 of title 10, United States Code, shall apply to transactions at the Base during the Project.

(k) LIMITATION.—None of the authorities in this section shall create any legal rights in any person or entity except rights embodied in leases, deeds, or contracts.

(l) EXPIRATION OF AUTHORITY.—The authority to enter into a lease, deed, permit, license, contract, or other agreement under this section shall expire on June 1, 2005.

(m) DEFINITIONS.—In this section:

(1) The term "Project" means the Base Efficiency Project authorized by this section.

(2) The term "Base" means Brooks Air Force Base, Texas.

(3) The term "Community" means the City of San Antonio, Texas.

(4) The term "Department" means the Department of the Air Force.

(5) The term "facility" means a building, structure, or other improvement to real property (except a military family housing unit as that term is used in subchapter IV of chapter 169 of title 10, United States Code).

(6) The term "joint activity" means an activity conducted on or for the benefit of the Base by the Department, jointly with the Community, the State, or any private entity, or any combination thereof.

(7) The term "Project Fund" means the Base Efficiency Project Fund established by subsection (h).

(8) The term "public services" means public services (except public schools, fire protection, and police protection) that are funded by local and State taxes and provided without specific charge to the public at large.

(9) The term "Secretary" means the Secretary of the Air Force or the Secretary's designee, who shall be a civilian official of the Department appointed by the President with the advice and consent of the Senate.

(10) The term "State" means the State of Texas.

(n) EFFECTIVE DATE.—This section becomes effective immediately upon enactment of this Act.

13. IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Section 374 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398; 114 Stat. 1654A–81; approved Oct. 30, 2000)

SEC. 374. [10 U.S.C. 2861 note] IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES.

(a) REPORT TO ADDRESS MAINTENANCE AND REPAIR BACKLOG.—Not later than March 15, 2001, the Secretary of Defense shall submit to Congress a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department.

(b) ELEMENTS OF REPORT.—At a minimum, the report shall include or address the following:

(1) The extent of the work necessary to repair and revitalize facilities and infrastructure, or to demolish and replace unusable facilities, carried as backlog by the Secretary of Defense or the Secretary of a military department.

(2) Measurable goals, over specified time frames, for addressing all of the identified requirements.

(3) Expected funding for each military department and Defense Agency to address the identified requirements during the period covered by the most recent future-years defense program submitted to Congress pursuant to section 221 of title 10, United States Code.

(4) The cost of the current backlog in maintenance and repair for each military department and Defense Agency, which shall be determined using the standard costs to standard facility categories in the Department of Defense Facilities Cost Factors Handbook, shown both in the aggregate and individually for each major military installation.

(5) The total number of square feet of building space of each military department and Defense Agency to be demolished or proposed for demolition, shown both in the aggregate and individually for each major military installation.

(6) The initiatives underway to identify facility and infrastructure requirements at military installations to accommodate new and developing weapons systems and to prepare installations to accommodate these systems.

(c) ANNUAL UPDATES.—The Secretary of Defense shall update the report required under subsection (a) annually. The annual updates shall be submitted to Congress at or about the time that the

budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, United States Code.

G. ENVIRONMENTAL RESTORATION AND CONSERVATION

1. SELECTED PROVISIONS FROM ANNUAL DEFENSE AUTHORIZATION ACTS

a. Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle C—Environmental Provisions

SEC. 321. [10 U.S.C. 2701 note] SETTLEMENT OF CLAIMS OF FOREIGN GOVERNMENTS FOR ENVIRONMENTAL CLEANUP OF OVERSEAS SITES FORMERLY USED BY THE DEPARTMENT OF DEFENSE.

(a) NOTICE OF NEGOTIATIONS.—The President shall notify Congress before entering into any negotiations for the ex-gratia settlement of the claims of a government of another country against the United States for environmental cleanup of sites in that country that were formerly used by the Department of Defense.

(b) AUTHORIZATION REQUIRED FOR USE OF FUNDS FOR PAYMENT OF SETTLEMENT.—No funds may be used for any payment under an ex-gratia settlement of any claims described in subsection (a) unless the use of the funds for that purpose is specifically authorized by law or international agreement, including a treaty.

SEC. 322. AUTHORITY TO PAY NEGOTIATED SETTLEMENT FOR ENVIRONMENTAL CLEANUP OF FORMERLY USED DEFENSE SITES IN CANADA.

(a) FINDINGS.—Congress makes the following findings with respect to the authorization of payment of settlement with Canada in subsection (b) regarding environmental cleanup at formerly used defense sites in Canada:

(1) A unique and longstanding national security alliance exists between the United States and Canada.

(2) The sites covered by the settlement were formerly used by the United States and Canada for their mutual defense.

(3) There is no formal treaty or international agreement between the United States and Canada regarding the environmental cleanup of the sites.

(4) Environmental contamination at some of the sites could pose a substantial risk to the health and safety of the United States citizens residing in States near the border between the United States and Canada.

(5) The United States and Canada reached a negotiated agreement for an ex-gratia reimbursement of Canada in full satisfaction of claims of Canada relating to environmental contamination which agreement was embodied in an exchange of Notes between the Government of the United States and the Government of Canada.

(6) There is a unique factual basis for authorizing a reimbursement of Canada for environmental cleanup at sites in Canada after the United States departure from such sites.

(7) The basis for and authorization of such reimbursement does not extend to similar claims by other nations.

(8) The Government of Canada is committed to spending the entire $100,000,000 of the reimbursement authorized in subsection (b) in the United States, which will benefit United States industry and United States workers.

(b) AUTHORITY TO MAKE PAYMENTS.—(1) Subject to subsection (c), the Secretary of Defense may, using funds specified under subsection (d), make a payment described in paragraph (2) for each fiscal year through fiscal year 2008 for purposes of the ex-gratia reimbursement of Canada in full satisfaction of any and all claims asserted against the United States by Canada for environmental cleanup of sites in Canada that were formerly used for the mutual defense of the United States and Canada.

(2) A payment referred to in paragraph (1) is a payment of $10,000,000, in constant fiscal year 1996 dollars, into the Foreign Military Sales Trust Account for purposes of Canada.

(c) CONDITION ON AUTHORITY FOR SUBSEQUENT FISCAL YEARS.—A payment may be made under subsection (b) for a fiscal year after fiscal year 1999 only if the Secretary of Defense submits to Congress with the budget for such fiscal year under section 1105 of title 31, United States Code, evidence that the cumulative amount expended by the Government of Canada for environmental cleanup activities in Canada during any fiscal years before such fiscal year in which a payment under that subsection was authorized was an amount equal to or greater than the aggregate amount of the payments under that subsection during such fiscal years.

(d) SOURCE OF FUNDS.—(1) The payment under subsection (b) for fiscal year 1998 shall be made from amounts appropriated pursuant to section 301(5) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1669).

(2) The payment under subsection (b) for fiscal year 1999 shall be made from amounts appropriated pursuant to section 301(5).

(3) For a fiscal year after fiscal year 1999, a payment may be made under subsection (b) from amounts appropriated pursuant to the authorization of appropriations for the Department of Defense for such fiscal year for Operation and Maintenance, Defense-Wide.

* * * * * * *

b. National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle C—Environmental Provisions

* * * * * * *

SEC. 348. [10 U.S.C. 2701 note] RECOVERY AND SHARING OF COSTS OF ENVIRONMENTAL RESTORATION AT DEPARTMENT OF DEFENSE SITES.

(a) REGULATIONS.—Not later than March 1, 1998, the Secretary of Defense shall prescribe regulations containing the guidelines and requirements described in subsections (b) and (c).

(b) GUIDELINES.—(1) The regulations prescribed under subsection (a) shall contain uniform guidelines for the military departments and defense agencies concerning the cost-recovery and cost-sharing activities of those departments and agencies.

(2) The Secretary shall take appropriate actions to ensure the implementation of the guidelines.

(c) REQUIREMENTS.—The regulations prescribed under subsection (a) shall contain requirements for the Secretaries of the military departments and the heads of defense agencies to—

(1) obtain all data that is relevant for purposes of cost-recovery and cost-sharing activities; and

(2) identify any negligence or other misconduct that may preclude indemnification or reimbursement by the Department of Defense for the costs of environmental restoration at a Department site or justify the recovery or sharing of costs associated with such restoration.

(d) DEFINITION.—In this section, the term "cost-recovery and cost-sharing activities" means activities concerning—

(1) the recovery of the costs of environmental restoration at Department of Defense sites from contractors of the Department and other private parties that contribute to environmental contamination at such sites; and

(2) the sharing of the costs of such restoration with such contractors and parties.

SEC. 349. [10 U.S.C. 2702 note] PARTNERSHIPS FOR INVESTMENT IN INNOVATIVE ENVIRONMENTAL TECHNOLOGIES.

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may enter into a partnership with one or more private entities to demonstrate and validate innovative environmental technologies.

(b) LIMITATIONS.—The Secretary of Defense may enter into a partnership with respect to an environmental technology under subsection (a) only if—

(1) any private entities participating in the partnership are selected through the use of competitive procedures;

(2) the partnership provides for parties other than the Department of Defense to provide at least 50 percent of the

funding required (not including in-kind contributions or pre-existing investments); and

(3) the Secretary determines that—

(A) the technology has clear potential to be of significant value to the Department of Defense in its environmental remediation activities at a substantial number of Department of Defense sites; and

(B) the technology would not be developed without the commitment of Department of Defense funds.

(c) EVALUATION GUIDELINES.—Before entering into a partnership with respect to an environmental technology under subsection (a), the Secretary of Defense shall give consideration to the following:

(1) The potential for the technology to be used by the Department of Defense for environmental remediation.

(2) The technical feasibility and maturity of the technology.

(3) The adequacy of financial and management plans to demonstrate and validate the technology.

(4) The costs and benefits to the Department of Defense of developing and using the technology.

(5) The potential for commercialization of the technology.

(6) The proposed arrangements for sharing the costs of the partnership through the use of resources outside the Department of Defense.

(d) FUNDING.—Under a partnership entered into under subsection (a), the Secretary of Defense may provide funds to the partner or partners from appropriations available to the Department of Defense for environmental activities, for a period of up to five years.

(e) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary of Defense shall include the following information with respect to partnerships entered into under this section:

(1) The number of such partnerships.

(2) A description of the nature of the technology involved in each such partnership.

(3) A list of all partners in such partnerships.

(f) COORDINATION.—The Secretary of Defense shall ensure that the Department of Defense coordinates with the Administrator of the Environmental Protection Agency in any verification sponsored by the Department of technologies demonstrated and validated by a partnership entered into under this section.

(g) PROCEDURES.—The Secretary of Defense shall develop appropriate procedures to ensure that all Department of Defense funds committed to a partnership entered into under this section are expended for the purpose authorized in the partnership agreement. The Secretary may not enter into a partnership under this section until 30 days after the date on which a copy of such procedures is provided to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(h) TERMINATION OF AUTHORITY.—The authority to enter into agreements under subsection (a) shall terminate three years after the date of the enactment of this Act. [1]

* * * * * * *

SEC. 351. [10 U.S.C. 2701 note] PILOT PROGRAM FOR THE SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES.

(a) AUTHORITY.—(1) The Secretary of Defense may, in consultation with the Administrator of General Services, carry out a pilot program to assess the feasibility and advisability of the sale of economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department.

(2) The Secretary may not carry out the pilot program after September 30, 2001.

(b) INCENTIVES AVAILABLE FOR SALE.—(1) Under the pilot program, the Secretary may sell economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department only if such incentives are not otherwise required for the activities or operations of the military department.

(2) The Secretary may not, under the pilot program, sell economic incentives attributable to the closure or realignment of a military installation under a base closure law.

(3) If the Secretary determines that additional sales of economic incentives are likely to result in amounts available for allocation under subsection (c)(2) in a fiscal year in excess of the limitation set forth in subparagraph (B) of that subsection, the Secretary shall not carry out such additional sales in that fiscal year.

(c) USE OF PROCEEDS.—(1) The proceeds of sale of economic incentives attributable to a facility of a military department shall be credited to the funds available to the facility for the costs of identifying, quantifying, or valuing economic incentives for the reduction of emission of air pollutants. The amount credited shall be equal to the cost incurred in identifying, quantifying, or valuing the economic incentives sold.

(2)(A)(i) If after crediting under paragraph (1) a balance remains, the amount of such balance shall be available to the Department of Defense for allocation by the Secretary to the military departments for programs, projects, and activities necessary for compliance with Federal environmental laws, including the purchase of economic incentives for the reduction of emission of air pollutants.

(ii) To the extent practicable, amounts allocated to the military departments under this subparagraph shall be made available to the facilities that generated the economic incentives providing the basis for the amounts.

(B) The total amount allocated under this paragraph in a fiscal year from sales of economic incentives may not equal or exceed $500,000.

(3) If after crediting under paragraph (1) a balance remains in excess of an amount equal to the limitation set forth in paragraph (2)(B), the amount of the excess shall be covered over into the Treasury as miscellaneous receipts.

[1] The termination date for the authority provided by section 349 is November 18, 2000.

(4) Funds credited under paragraph (1) or allocated under paragraph (2) shall be merged with the funds to which credited or allocated, as the case may be, and shall be available for the same purposes and for the same period as the funds with which merged.

(d) DEFINITIONS.—In this section:

(1) The term "base closure law" means the following:

(A) Section 2687 of title 10, United States Code.

(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).

(2) The term "economic incentives for the reduction of emission of air pollutants" means any transferable economic incentives (including marketable permits and emission rights) necessary or appropriate to meet air quality requirements under the Clean Air Act (42 U.S.C. 7401 et seq.).

---

c. National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle C—Environmental Provisions

* * * * * * *

SEC. 324. SHIPBOARD SOLID WASTE CONTROL.

(a) [Omitted—Amendment]

(b) SENSE OF CONGRESS.—(1) It is the sense of Congress that it should be an objective of the Navy to achieve full compliance with Annex V to the Convention as part of the Navy's development of ships that are environmentally sound.

(2) In this subsection and subsection (c), the terms "Convention" and "ship" have the meanings given such terms in section 2(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)).

(c) [10 U.S.C. 2706 note] 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.

(d) [Omitted—Amendment]

SEC. 325. [10 U.S.C. 2701 note] AUTHORITY TO DEVELOP AND IMPLEMENT LAND USE PLANS FOR DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) AUTHORITY.—The Secretary of Defense may, to the extent possible and practical, develop and implement, as part of the Defense Environmental Restoration Program provided for in chapter 160 of title 10, United States Code, a land use plan for any defense site selected by the Secretary under subsection (b).

(b) SELECTION OF SITES.—The Secretary may select up to 10 defense sites, from among sites where the Secretary is planning or implementing environmental restoration activities, for which land use plans may be developed under this section.

(c) REQUIREMENT TO CONSULT WITH REVIEW COMMITTEE OR ADVISORY BOARD.—In developing a land use plan under this section, the Secretary shall consult with a technical review committee established pursuant to section 2705(c) of title 10, United States Code, a restoration advisory board established pursuant to section 2705(d) of such title, a local land use redevelopment authority, or another appropriate State agency.

(d) 50-YEAR PLANNING PERIOD.—A land use plan developed under this section shall cover a period of at least 50 years.

(e) IMPLEMENTATION.—For each defense site for which the Secretary develops a land use plan under this section, the Secretary shall take into account the land use plan in selecting and implementing, in accordance with applicable law, environmental restoration activities at the site.

(f) DEADLINES.—For each defense site for which the Secretary intends to develop a land use plan under this section, the Secretary shall develop a draft land use plan by October 1, 1997, and a final land use plan by March 15, 1998.

(g) DEFINITION OF DEFENSE SITE.—For purposes of this section, the term "defense site" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft under the jurisdiction of the Department of Defense, or (B) any site or area under the jurisdiction of the Department of Defense where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(h) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary shall include information on the land use plans developed under this section and the effect such plans have had on environmental restoration activi-

ties at the defense sites where they have been implemented. The annual report submitted in 1999 shall include recommendations on whether such land use plans should be developed and implemented throughout the Department of Defense.

(i) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a land use plan developed under this section with respect to a defense site, shall be construed as requiring any modification to a land use plan that was developed before the date of the enactment of this Act.

(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

SEC. 326. PILOT PROGRAM TO TEST ALTERNATIVE TECHNOLOGY FOR LIMITING AIR EMISSIONS DURING SHIPYARD BLASTING AND COATING OPERATIONS.

(a) DETERMINATION BY SECRETARY OF THE NAVY.—(1) The Secretary of the Navy shall make a determination whether the alternative technology described in paragraph (2) has the clear potential for significant benefit to the Navy. The Secretary shall submit to Congress a notification in writing of the determination not later than 60 days after the date of the enactment of this Act.

(2) The technology referred to in paragraph (1) is an alternative technology designed to capture and destroy or remove particulate emissions and volatile air pollutants that occur during abrasive blasting and coating operations at naval shipyards.

(b) PILOT PROGRAM.—If the determination made under subsection (a)(1) is in the affirmative, the Secretary shall establish a pilot program to test the alternative technology. In conducting the test, the Secretary shall seek to demonstrate whether the technology is valid, cost effective, and in compliance with environmental laws and regulations.

(c) REPORT.—Upon completion of the test conducted under the pilot program, 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 setting forth in detail the results of the test. The report shall include recommendations on whether the alternative technology merits implementation at naval shipyards and such other recommendations as the Secretary considers appropriate.

SEC. 327. [10 U.S.C. 2702 note] AGREEMENTS FOR SERVICES OF OTHER AGENCIES IN SUPPORT OF ENVIRONMENTAL TECHNOLOGY CERTIFICATION.

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may enter into a cooperative agreement with an agency of a State or local government, or with an Indian tribe, to obtain assistance in certifying environmental technologies.

(b) LIMITATIONS.—The Secretary of Defense may enter into a cooperative agreement with respect to an environmental technology under subsection (a) only if the Secretary determines—

(1) that the technology has clear potential to be of significant value to the Department of Defense; and

(2) that there is no reasonably available market in the private sector for the technology without a certification by the Department of Defense, the Environmental Protection Agency, or a State environmental agency.

(c) TYPES OF ASSISTANCE.— The types of assistance that may be obtained under subsection (a) include the following:

(1) Data collection and analysis.

(2) Technical assistance in conducting a demonstration of an environmental technology, including the implementation of quality assurance and quality control programs.

(d) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary of Defense shall include the following information with respect to cooperative agreements entered into under this section:

(1) The number of such agreements.

(2) The number of States in which such agreements have been entered into.

(3) A description of the nature of the technology involved in each such agreement.

(4) The amount of funds obligated or expended by the Department of Defense for each such agreement during the year covered by the report.

(5) A statement of the funding that will be required to meet commitments made to State and local governments and Indian tribes under such agreements entered into during the fiscal year preceding the fiscal year in which the report is submitted.

(6) A description of any cost-sharing arrangement under any such agreements.

(e) DEFINITION.—In this section, the term "Indian tribe" has the meaning given that term by section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

(f) TERMINATION OF AUTHORITY.—The authority provided under subsection (a) shall terminate five years after the date of the enactment of this Act. [1]

* * * * * * *

SEC. 333. [33 U.S.C. 2406 note] NAVY PROGRAM TO MONITOR ECOLOGICAL EFFECTS OF ORGANOTIN.

(a) MONITORING REQUIREMENT.—The Secretary of the Navy shall, in consultation with the Administrator of the Environmental Protection Agency, develop and implement a program to monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States, as described in section 7(a) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(a)). The program shall be designed to produce high-quality data to enable the Environmental Protection Agency to develop water quality criteria concerning organotin compounds.

[1] The termination date for the authority provided by section 327 is September 23, 2001.

(b) FUNDING.—The Administrator of the Environmental Protection Agency shall provide, in advance, such sums as are necessary to the Secretary of the Navy for the costs of developing and implementing the program under subsection (a).

(c) WRITTEN AGREEMENT.—The Secretary of the Navy and the Administrator of the Environmental Protection Agency shall enter into a written agreement setting forth the actions that the Secretary plans to take under subsection (a) and the funding that the Administrator agrees to provide under subsection (b). If the Secretary determines that the Administrator will not enter into such an agreement, the Secretary shall notify the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate not later than 30 days after such determination.

(d) NONIMPAIRMENT OF MISSION.—Compliance with subsection (a) shall be conducted in such a manner so as not to impair the ability of the Department of the Navy to meet its operational requirements.

(e) REPORT.—Not later than June 1, 1997, the Secretary of the Navy shall submit to Congress a report containing the following:

(1) A description of the monitoring program developed pursuant to subsection (a).

(2) An analysis of the results of the monitoring program as of the date of the submission of the report.

(3) Information about the progress of Navy programs, referred to in section 7(c) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(c)), for evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

(4) An assessment, developed in consultation with the Administrator of the Environmental Protection Agency, of the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment.

(f) SENSE OF CONGRESS.—(1) It is the sense of Congress that the Administrator of the Environmental Protection Agency, in consultation with the Secretary of the Navy, should develop, for purposes of the national pollutant discharge elimination system, a model permit for the discharge of organotin compounds at shipbuilding and ship repair facilities.

(2) For purposes of this subsection, the term "organotin" has the meaning provided in section 3 of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2402).

(g) TERMINATION.—The program required by subsection (a) shall terminate five years after the date of the enactment of this Act. [1]

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

[1] The termination date for the program required by section 333 is September 23, 2001.

Subtitle C—Program Authorizations, Restrictions, and Limitations

* * * * * * *

SEC. 3143. [42 U.S.C. 7274n] PROJECTS TO ACCELERATE CLOSURE ACTIVITIES AT DEFENSE NUCLEAR FACILITIES.

(a) IN GENERAL.—The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) PURPOSE.—The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) ELIGIBLE PROJECTS.—(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential

for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.

(d) PROGRAM ADMINISTRATION.—The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) SELECTION OF PROJECTS.—(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.

(f) MULTIYEAR CONTRACTS.—Notwithstanding section 304B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(d)), the Secretary of Energy may enter into multiyear contracts to carry out projects selected under this section for up to 10 program years.

(g) FUNDING.—(1) In the budget submitted to Congress under section 1105(a) of title 31, United States Code, each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) ANNUAL REPORT.—The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) DURATION OF PROGRAM.—No closure-acceleration project selected under this section may be carried out after the expiration of the 15-year period beginning on the date of the enactment of this Act. [1]

(j) SAVINGS PROVISION.—Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

* * * * * * *

Subtitle E—Defense Nuclear Environmental Cleanup and Management

SEC. 3171. [42 U.S.C. 7274k note] PURPOSE.

The purpose of this subtitle is to provide for the expedited environmental restoration and waste management of defense nuclear facilities through the use of cost-effective management mechanisms and innovative technologies.

SEC. 3172. [42 U.S.C. 7274k note] APPLICABILITY.

(a) IN GENERAL.—The provisions of this subtitle shall apply to the following defense nuclear facilities:

(1) Any defense nuclear facility for which the fiscal year 1996 environmental management budget was $350,000,000 or more.

(2) Any other defense nuclear facility if—

(A) the chief executive officer of the State in which the facility is located submits to the Secretary a request that the facility be covered by the provisions of this subtitle; and

(B) the Secretary approves the request.

(b) LIMITATION.—The Secretary may not approve a request under subsection (a)(2) until 60 days after the date on which the Secretary notifies Congress of the Secretary's receipt of the request.

SEC. 3173. [42 U.S.C. 7274k note] SITE MANAGER.

(a) APPOINTMENT.—(1) Subject to paragraph (2), the Secretary shall expeditiously appoint a Site Manager for each defense nuclear facility (in this subtitle referred to as the "Site Manager").

(2) In the case of a defense nuclear facility at which another program, in addition to environmental management operations, is carried out, and such other program is subject to management by a site manager, field office manager, or operations office manager, the Secretary shall appoint such manager to be the Site Manager for such facility for purposes of this subtitle.

[1] The expiration date referred to in subsection (i) is September 23, 2011.

(b) AUTHORITY.—(1) Except as provided in paragraph (5), in addition to other authorities provided for in this subtitle, the Secretary may delegate to the Site Manager of a defense nuclear facility authority to oversee and direct environmental management operations at the facility, including the authority to—

(A) enter into and modify contractual agreements to enhance environmental restoration and waste management at the facility;

(B) request that the Department headquarters submit to Congress a reprogramming package shifting funds among accounts in order to facilitate the most efficient and timely environmental restoration and waste management of the facility, and, in the event that the Department headquarters does not act upon the request within 60 days, submit such request to the appropriate congressional committees for review;

(C) subject to paragraph (2), negotiate amendments to environmental agreements for the Department;

(D) manage Department personnel at the facility;

(E) consider the costs, risk reduction benefits, and other benefits for the purposes of ensuring protection of human health and the environment or safety, with respect to any environmental remediation activity the cost of which exceeds $25,000,000; and

(F) have assessments prepared for environmental restoration activities (in several documents or a single document, as determined by the Site Manager).

(2) In using the authority described in paragraph (1)(C), a Site Manager may not negotiate an amendment that is expected to result in additional life cycle costs to the Department without the approval of the Secretary.

(3) In using any authority described in paragraph (1), a Site Manager of a facility shall consult with the State where the facility is located and the advisory board for the facility.

(4) The delegation of any authority pursuant to this subsection shall not be construed as restricting the Secretary's authority to delegate other authorities as necessary.

(5) In the case of the Hanford Reservation, Richland, Washington, the Secretary shall delegate to the Site Manager the authority described in paragraph (1) for fiscal year 1998. The Secretary may withdraw the delegated authority if the Secretary—

(A) determines that the Site Manager of the Hanford Reservation has misused or misapplied that authority; and

(B) the Secretary submits to Congress a notification of the Secretary's intent to withdraw the authority.

(c) INFORMATION TO SECRETARY.—The Site Manager of a defense nuclear facility shall regularly inform the Secretary, Congress, and the advisory board for the facility of the progress made by the Site Manager to achieve the expedited environmental restoration and waste management of the facility.

SEC. 3174. [42 U.S.C. 7274k note] DEPARTMENT OF ENERGY ORDERS.

An order imposed after the date of the enactment of this Act relating to the execution of environmental restoration, waste man-

agement, or technology development activities at a defense nuclear facility under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) may be imposed by the Secretary at the defense nuclear facility only if the Secretary finds that the order is necessary for the protection of human health and the environment or safety, the fulfillment of current legal requirements, or the conduct of critical administrative functions.

SEC. 3175. [42 U.S.C. 7274k note] DEPLOYMENT OF TECHNOLOGY FOR REMEDIATION OF DEFENSE NUCLEAR WASTE.

(a) IN GENERAL.—The Site Manager of each defense nuclear facility shall promote the deployment of innovative environmental technologies for remediation of defense nuclear waste at the facility.

(b) CRITERIA.—To carry out subsection (a), the Site Manager of a defense nuclear facility shall establish a program at the facility for the testing and deployment of innovative environmental technologies for the remediation of defense nuclear waste at the facility. In establishing such a program, the Site Manager may—

(1) establish a simplified, standardized, and timely process for the testing, verification, certification, and deployment of environmental technologies;

(2) solicit applications to test and deploy environmental technologies suitable for environmental restoration and waste management activities at the facility, including prevention, control, characterization, treatment, and remediation of contamination;

(3) consult and cooperate with the heads of existing programs at the facility for the verification and certification of environmental technologies at the facility;

(4) pay the costs of the demonstration of such technologies;

(5) enter into contracts and other agreements with other public and private entities to deploy environmental technologies at the facility; and

(6) include incentives, such as product performance specifications, in contracts to encourage the implementation of innovative environmental technologies.

(c) FOLLOW-ON CONTRACTS.—(1) If the Secretary and a person demonstrating a technology under the program enter into a contract for remediation of nuclear waste at a defense nuclear facility covered by this subtitle, or at any other Department facility, as a follow-on to the demonstration of the technology, the Secretary shall ensure that the contract provides for the Secretary to recoup from the contractor the costs incurred by the Secretary pursuant to subsection (b)(6) for the demonstration.

(2) No contract between the Department and a contractor for the demonstration of technology under subsection (b) may provide for reimbursement of the costs of the contractor on a cost plus fee basis.

(d) SAFE HARBORS.—In the case of an environmental technology tested, verified, certified, and deployed at a defense nuclear facility under a program established under subsection (b), the Site Manager of another defense nuclear facility may request the Secretary to waive or limit contractual or Department regulatory

requirements that would otherwise apply in implementing the same environmental technology at such other facility.

SEC. 3176. [42 U.S.C. 7274k note] PERFORMANCE-BASED CONTRACTING.

(a) PROGRAM.—The Secretary shall develop and implement a program for performance-based contracting for contracts entered into for environmental remediation at defense nuclear facilities. The program shall ensure that, to the maximum extent practicable and appropriate, such contracts include the following:

(1) Clearly stated and results oriented performance criteria and measures.

(2) Appropriate incentives for contractors to meet or exceed the performance criteria effectively and efficiently.

(3) Appropriate criteria and incentives for contractors to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services.

(4) Specific incentives for cost savings.

(5) Financial accountability.

(6) When appropriate, reduction of fee for failure to meet minimum performance criteria and standards.

(b) CRITERIA AND MEASURES.—Performance criteria and measures should take into consideration, at a minimum, the following: managerial control; elimination or reduction of risk to public health and the environment; workplace safety; financial control; goal-oriented work scope; use of innovative and alternative technologies and techniques that result in cleanups being performed less expensively, more quickly, and within quality parameters; and performing within benchmark cost estimates.

(c) CONSULTATION.—In implementing this section, the Secretary shall consult with interested parties.

(d) DEADLINE.—The Secretary shall implement this section not later than October 1, 1997, unless the Secretary submits to Congress before that date a report with a schedule for completion of action under this section.

SEC. 3177. [42 U.S.C. 7274k note] DESIGNATION OF COVERED FACILITIES AS ENVIRONMENTAL CLEANUP DEMONSTRATION AREAS.

(a) DESIGNATION.—Each defense nuclear facility is hereby designated as an environmental cleanup demonstration area to carry out the purposes of this subtitle, including the utilization and evaluation of new technologies to be used in environmental restoration and remediation at other defense nuclear facilities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal and State regulatory agencies, members of the communities surrounding any defense nuclear facility, and other affected parties with respect to the facility should continue to—

(1) develop expedited and streamlined processes and systems for cleaning up such facility;

(2) eliminate unnecessary administrative complexity and unnecessary duplication of regulation with respect to the cleanup of such facility;

(3) proceed expeditiously and cost-effectively with environmental restoration and remediation activities at such facility;

(4) consider future land use in selecting environmental cleanup remedies at such facility; and

(5) identify and recommend to Congress changes in law needed to expedite the cleanup of such facility.

SEC. 3178. [42 U.S.C. 7274k note] DEFINITIONS.

In this subtitle:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Department" means the Department of Energy.

(3) The term "defense nuclear facility" has the meaning given the term "Department of Energy defense nuclear facility" in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

SEC. 3179. [42 U.S.C. 7274k note] TERMINATION.

This subtitle is repealed effective September 30, 2001.

SEC. 3180. [42 U.S.C. 7274k note] REPORT.

Not later than September 30, 2000, the Secretary shall submit to Congress a report on the effectiveness of this subtitle in expediting environmental restoration and waste management of defense nuclear facilities. The report shall include recommendations on whether this subtitle should remain in effect beyond September 30, 2001.

---

d. National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106, approved Feb. 10, 1996)

TITLE III—OPERATION AND MAINTENANCE

Subtitle C—Environmental Provisions

* * * * * * *

SEC. 323. USE OF DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT.

(a) GOAL FOR CERTAIN DERA EXPENDITURES.—It shall be the goal of the Secretary of Defense to limit, by the end of fiscal year 1997, spending for administration, support, studies, and investigations associated with the Defense Environmental Restoration Account to 20 percent of the total funding for that account.

(b) REPORT.—Not later than April 1, 1996, the Secretary shall submit to Congress a report that contains specific, detailed information on—

(1) the extent to which the Secretary has attained the goal described in subsection (a) as of the date of the submission of the report; and

(2) if the Secretary has not attained such goal by such date, the actions the Secretary plans to take to attain the goal.

---

e. National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337, approved Oct. 5, 1994)

TITLE III—OPERATION AND MAINTENANCE

Subtitle C—Environmental Provisions

* * * * * * *

SEC. 328. [10 U.S.C. 2701 note] ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM FOR DEFENSE PERSONNEL.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and conduct an education and training program for members of the Armed Forces and civilian employees of the Department of Defense whose responsibilities include planning or executing the environmental mission of the Department. The Secretary shall conduct the program to ensure that such members and employees obtain and maintain the knowledge and skill required to comply with existing environmental laws and regulations.

(b) IDENTIFICATION OF MILITARY FACILITIES WITH ENVIRONMENTAL TRAINING EXPERTISE.—As part of the program, the Secretary may identify military facilities that have existing expertise (or the capacity to develop such expertise) in conducting education and training activities in various environmental disciplines. In the case of a military facility identified under this subsection, the Secretary should encourage the use of the facility by members and employees referred to in subsection (a) who are not under the jurisdiction of the military department operating the facility.

---

f. National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Subtitle D—Other Matters

* * * * * * *

SEC. 3153. [42 U.S.C. 7274k] BASELINE ENVIRONMENTAL MANAGEMENT REPORTS.

(a) ANNUAL ENVIRONMENTAL RESTORATION REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which

the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) BIENNIAL WASTE MANAGEMENT REPORTS.—(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects for waste management, including pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) CONTENTS OF REPORTS.—A report required under subsection (a) or (b) shall be based on compliance with all applicable provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report;

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment;

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment; and

(F) a description of the personnel and facilities required to complete the activity or project; and

(3) contain a description of the research and development necessary to develop the technology to conduct the activities and projects covered by the report.

(d) BIENNIAL STATUS AND VARIANCE REPORTS.—(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activities and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of completion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and estimated expenditures of more than 15 percent or $10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) COMPLIANCE TRACKING.—In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy's compliance with relevant Federal and State regulatory milestones.

(f) PUBLIC PARTICIPATION IN DEVELOPMENT OF INFORMATION.—(1) The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in the development of information necessary to complete the reports required by subsections (a), (b), and (d).

(2) Consultation under paragraph (1) shall not interfere with the timely submission to Congress of the budget for a fiscal year.

(3) The Secretary may award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to facilitate the participation of such entities in the development of information under this subsection. The Secretary may also take

appropriate action to facilitate the participation of interested members of the public in such development under this subsection.

---

g. National Defense Authorization Act for Fiscal Year 1993

(Public Law 102–484, approved Oct. 23, 1992)

TITLE III—OPERATION AND MAINTENANCE

* * * * * * *

Subtitle C—Environmental Provisions

* * * * * * *

SEC. 323. [10 U.S.C. 2701 note] PILOT PROGRAM FOR EXPEDITED ENVIRONMENTAL RESPONSE ACTIONS.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program to expedite the performance of on-site environmental restoration at—

(1) military installations scheduled for closure under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(2) military installations scheduled for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

(3) facilities for which the Secretary is responsible under the Defense Environmental Restoration Program established under section 2701 of title 10, United States Code.

(b) SELECTION OF INSTALLATIONS AND FACILITIES.—(1) For participation in the pilot program, the Secretary shall select—

(A) 2 military installations referred to in subsection (a)(1);

(B) 4 military installations referred to in subsection (a)(2), consisting of—

(i) 2 military installations scheduled for closure as of the date of the enactment of this Act; and

(ii) 2 military installations included in the list transmitted by the Secretary no later than April 15, 1993, pursuant to section 2903(c)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and recommended in a report transmitted by the President in that year pursuant to section 2903(e) of such Act and for which a joint resolution disapproving such recommendations is not enacted by the deadline set forth in section 2904(b) of such Act; and

(C) not less than 4 facilities referred to in subsection (a)(3) with respect to each military department.

(2)(A) Except as provided in subparagraph (B), the selections under paragraph (1) shall be made not later than 60 days after the date of the enactment of this Act [Oct. 23, 1992].

(B) The selections under paragraph (1) of military installations described in subparagraph (B)(ii) of such paragraph shall be made not later than 60 days after the date on which the deadline (set forth in section 2904(b) of such Act) for enacting a joint resolution

of disapproval with respect to the report transmitted by the President has passed.

(3) The installations and facilities selected under paragraph (1) shall be representative of—

(A) a variety of the environmental restoration activities required for facilities under the Defense Environmental Restoration Program and for military installations scheduled for closure under the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) and the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

(B) the different sizes of such environmental restoration activities to provide, to the maximum extent practicable, opportunities for the full range of business sizes to enter into environmental restoration contracts with the Department of Defense and with prime contractors to perform activities under the pilot program.

(c) EXECUTION OF PROGRAM.—Subject to subsection (d), and to the maximum extent possible, the Secretary shall, in order to eliminate redundant tasks and to accelerate environmental restoration at military installations, use the authorities granted in existing law to carry out the pilot program, including—

(1) the development and use of innovative contracting techniques;

(2) the use of all reasonable and appropriate methods to expedite necessary Federal and State administrative decisions, agreements, and concurrences; and

(3) the use (including any necessary request for the use) of existing authorities to ensure that environmental restoration activities under the pilot program are conducted expeditiously, with particular emphasis on activities that may be conducted in advance of any final plan for environmental restoration.

(d) PROGRAM PRINCIPLES.—The Secretary shall carry out the pilot program consistent with the following principles:

(1) Activities of the pilot program shall be carried out subject to and in accordance with all applicable Federal and State laws and regulations.

(2) Competitive procedures shall be used to select the contractors.

(3) The experience and ability of the contractors shall be considered, in addition to cost, as a factor to be evaluated in the selection of the contractors.

(e) PROGRAM RESTRICTIONS.—The pilot program established in this section shall not result in the delay of environmental restoration activities at other military installations and former sites of the Department of Defense.

SEC. 324. [10 U.S.C. 2701 note] OVERSEAS ENVIRONMENTAL RESTORATION.

(a) SENSE OF CONGRESS.—It is the sense of the Congress that in carrying out environmental restoration activities at military installations outside the United States, the President should seek to obtain an equitable division of the costs of environmental restoration with the nation in which the installation is located.

(b) REPORT.—The Secretary of Defense shall include in each Report on Allied Contributions to the Common Defense prepared under section 1003 of Public Law 98–525 (22 U.S.C. 1928) information, in classified and unclassified form, describing the efforts undertaken and the progress made by the President in carrying out subsection (a) during the period covered by the report.

* * * * * * *

SEC. 326. [10 U.S.C. 2301 note] ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS.

(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

(I) was awarded before June 1, 1993; and

(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

(c) DEFINITIONS.—In this section:

(1) The term "class I ozone-depleting substance" means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

(2) The term "Federal Acquisition Regulation" means the single Government-wide procurement regulation issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)).

* * * * * * *

SEC. 328. LEGACY RESOURCE MANAGEMENT FELLOWSHIP PROGRAM.

(a) ESTABLISHMENT.—There is established the Legacy Fellowship Program in Natural and Cultural Resource Management (in this section referred to as the "Legacy Fellowship Program"). The Legacy Fellowship Program is a part of the Legacy Resource Management Program established pursuant to section 8120 of the Department of Defense Appropriations Act, 1991 (Public Law 101–511; 104 Stat. 1905).

(b) PURPOSES.—The purposes of the Legacy Fellowship Program are as follows:

(1) To support the purposes of the Legacy Resource Management Program set forth in section 8120(b) of such Act.

(2) To provide training to civilian personnel and military personnel in the management of natural and cultural resources.

(c) FELLOWS.—(1) The Legacy Fellowship Program shall be composed of not less than 3 fellows who shall be appointed by the Deputy Assistant Secretary of Defense for Environment. Such fellows shall be appointed from among qualified persons in the military and civilian sectors.

(2)(A) Each fellow who is an officer or employee of the United States shall serve without compensation in addition to that received for the services as an officer or employee of the United States. Any such service shall be without interruption or loss of civil service status or privilege.

(B) The Deputy Assistant Secretary of Defense shall fix (in an amount the Deputy Assistant Secretary determines appropriate) the compensation of the fellows, if any, who are not officers or employees of the United States. Such fellows shall not be considered employees of the Federal Government other than for purposes of chapter 81 of title 5, United States Code.

(3) Fellows shall serve for a term of one year and may be reappointed for an additional term of one year.

(4) The Deputy Assistant Secretary of Defense shall assign the fellows to an agency, office, or other entity (other than the Office of the Deputy Assistant Secretary of Defense for Environment) that is responsible for the implementation of the Legacy Resource Management Program in the Department of Defense. Upon assignment, the fellow shall assist the agency, office, or entity in carrying out the purposes of the Legacy Resource Management Program.

(d) FUNDING.—Of the funds authorized to be appropriated in fiscal year 1993 for the Department of Defense and made available for the Legacy Resource Management Program, $100,000 may be used for the Legacy Fellowship Program. Such funds shall be available for obligation without fiscal year limitation.

* * * * * * *

SEC. 330. [10 U.S.C. 2687 note] INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any

claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

(2) The persons and entities described in this paragraph are the following:

(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury

or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(f) DEFINITIONS.—In this section:

(1) The terms "facility", "hazardous substance", "release", and "pollutant or contaminant" have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601 (9), (14), (22), and (33)).

(2) The term "military installation" has the meaning given such term under section 2687(e)(1) of title 10, United States Code.

(3) The term "base closure law" means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act [Oct. 23, 1992].

---

h. National Defense Authorization Act for Fiscal Year 1992 and 1993

(Public Law 102–190, approved Dec. 5, 1991)

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Part C—Miscellaneous

* * * * * * *

SEC. 3132. [42 U.S.C. 7274e] SCHOLARSHIP AND FELLOWSHIP PROGRAM FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT.

(a) ESTABLISHMENT.—The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the "Marilyn Lloyd Scholarship and Fellowship Program".

(b) ELIGIBILITY.—To be eligible to participate in the scholarship and fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965);

(2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;

(3) sign an agreement described in subsection (c);

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet such other requirements as the Secretary prescribes.

(c) AGREEMENT.—An agreement between the Secretary and a participant in the scholarship and fellowship 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 of school years (not exceeding 5) during which the participant is pursuing a program 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 program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) REPAYMENT.—(1) Any person participating in a scholarship or fellowship 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, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c), or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c); or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(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, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

(A) in the case of a person who is an employee, 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.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) PREFERENCE FOR COOPERATIVE EDUCATION STUDENTS.—In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.

(f) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(g) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) REPORT TO CONGRESS.—Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

(i) FUNDING.—Of the funds authorized to be appropriated pursuant to section 3101(9)(B), $1,000,000 may be used for the purpose of carrying out this section.

* * * * * * *

SEC. 3134. [42 U.S.C. 7274f] DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACCOUNT.

(a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States for the Department of Energy an account to be known as the "Defense Environmental Restoration and Waste Management Account" (hereafter in this section referred to as the "Account").

(b) AMOUNTS IN ACCOUNT.—All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the

extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

---

i. National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

TITLE III—OPERATION AND MAINTENANCE

Part D—Environmental Provisions

* * * * * * *

SEC. 344. [10 U.S.C. 2701 note] ENVIRONMENTAL EDUCATION PROGRAM FOR DEPARTMENT OF DEFENSE PERSONNEL

(a) REQUIREMENT TO ESTABLISH PROGRAM.—The Secretary of Defense shall establish a program for the purpose of educating Department of Defense personnel in environmental management.

(b) PROGRAM REQUIREMENTS.—Under the program, the Secretary shall—

(1) in consultation with environmental education personnel of colleges and universities in the United States that offer undergraduate and graduate level courses in a wide range of environmental disciplines, develop a curriculum of environmental management courses offered by such colleges and universities;

(2) provide opportunities for Department of Defense personnel to attend such courses at such colleges and universities; and

(3) develop the criteria for the selection of Department of Defense personnel to attend such courses.

(c) FISCAL YEAR 1991 FUNDING MATTERS.—Of the funds authorized to be appropriated pursuant to section 301, not more than $100,000 shall be available for the program established pursuant to subsection (a).

(d) RECOMMENDATIONS REGARDING CONTINUATION OF PROGRAM AFTER FISCAL YEAR 1991.—Not later than the date on which the President submits the budget for fiscal year 1992 to Congress pursuant to section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives in writing his recommendations regarding whether the program established under subsection (a) should be continued after September 30, 1991.

* * * * * * *

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Part C—Miscellaneous

* * * * * * *

SEC. 3134. [42 U.S.C. 7274c] REPORT ON ENVIRONMENTAL RESTORATION EXPENDITURES

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31, United States Code), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.

---

j. National Defense Authorization Act for Fiscal Years 1990 and 1991

(Public Law 101–189, approved Nov. 29, 1989)

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

* * * * * * *

Part D—Environment, Safety, and Management

SEC. 3141. [42 U.S.C. 7274a] DEFENSE WASTE CLEANUP TECHNOLOGY PROGRAM

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) COORDINATION OF RESEARCH ACTIVITIES.—(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a), the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a).

(c) REPORT.—(1) The Secretary shall submit to Congress not later than April 1 each year a report on the research activities of the Department of Energy for the development of technologies referred to in subsection (a). The report shall cover such activities for the fiscal year preceding the fiscal year in which the report is submitted. The Secretary shall include in the report the following:

(A) A description and assessment of each research program being carried out by or for the Department of Energy and the identification of the individual laboratory, contractor, or insti-

tution of higher education responsible for the research program.

(B) An assessment of the extent to which (i) there are practical applications of the technologies being researched, and (ii) such technologies will likely facilitate compliance by the Department of Energy with applicable environmental laws and regulations.

(C) An accounting of the funds allocated to each research program and to each laboratory, contractor, or institution of higher education carrying out the research program.

(D) An assessment of the research projects that have been coordinated with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies pursuant to subsection (b).

(2) The first report required by paragraph (1) shall be submitted not later than April 1, 1990.

(d) DEFINITIONS.—As used in this section:

(1) The term "defense waste" means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term "inactive defense waste disposal site" means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.

2. TITLE I OF SIKES ACT

(Act of September 15, 1960; Public Law 86–797)

AN ACT To promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sikes Act".

TITLE I—CONSERVATION PROGRAMS ON MILITARY INSTALLATIONS

SEC. 100. [16 U.S.C. 670] DEFINITIONS.

In this title:

(1) MILITARY INSTALLATION.—The term "military installation"—

(A) means any land or interest in land owned by the United States and administered by the Secretary of Defense or the Secretary of a military department, except land under the jurisdiction of the Assistant Secretary of the Army having responsibility for civil works;

(B) includes all public lands withdrawn from all forms of appropriation under public land laws and reserved for use by the Secretary of Defense or the Secretary of a military department; and

(C) does not include any land described in subparagraph (A) or (B) that is subject to an approved recommendation for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) STATE FISH AND WILDLIFE AGENCY.—The term "State fish and wildlife agency" means the one or more agencies of State government that are responsible under State law for managing fish or wildlife resources.

(3) UNITED STATES.—The term "United States" means the States, the District of Columbia, and the territories and possessions of the United States.

SEC. 101. [16 U.S.C. 670a] (a) AUTHORITY OF SECRETARY OF DEFENSE.—

(1) PROGRAM.—

(A) IN GENERAL.—The Secretary of Defense shall carry out a program to provide for the conservation and rehabilitation of natural resources on military installations.

(B) INTEGRATED NATURAL RESOURCES MANAGEMENT PLAN.—To facilitate the program, the Secretary of each military department shall prepare and implement an integrated natural resources management plan [1] for each military installation in the United States under the jurisdiction of the Secretary, unless the Secretary determines that the absence of significant natural resources on a particular installation makes preparation of such a plan inappropriate.

(2) COOPERATIVE PREPARATION.—The Secretary of a military department shall prepare each integrated natural resources management plan for which the Secretary is responsible in cooperation with the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, and the head of each appropriate State fish and wildlife agency for the State in which the military installation concerned is located. Consistent with paragraph (4), the resulting plan for the military installation shall reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources.

(3) PURPOSES OF PROGRAM.—Consistent with the use of military installations to ensure the preparedness of the Armed Forces, the Secretaries of the military departments shall carry out the program required by this subsection to provide for—

---

[1] Section 2905 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85; 111 Stat. 2019), provides:

SEC. 2905. REVIEW FOR PREPARATION OF INTEGRATED NATURAL RESOURCES MANAGEMENT PLANS.

(a) DEFINITIONS.—In this section, the terms "military installation" and "United States" have the meanings provided in section 100 of the Sikes Act (as added by section 2911).

(b) REVIEW OF MILITARY INSTALLATIONS.—

(1) REVIEW.—Not later than 270 days after the date of enactment of this Act, the Secretary of each military department shall—

(A) review each military installation in the United States that is under the jurisdiction of that Secretary to determine the military installations for which the preparation of an integrated natural resources management plan under section 101 of the Sikes Act (as amended by this title) is appropriate; and

(B) submit to the Secretary of Defense a report on the determinations.

(2) REPORT TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Secretary of Defense shall submit to Congress a report on the reviews conducted under paragraph (1). The report shall include—

(A) a list of the military installations reviewed under paragraph (1) for which the Secretary of the appropriate military department determines that the preparation of an integrated natural resources management plan is not appropriate; and

(B) for each of the military installations listed under subparagraph (A), an explanation of each reason such a plan is not appropriate.

(c) DEADLINE FOR INTEGRATED NATURAL RESOURCES MANAGEMENT PLANS.—Not later than three years after the date of the submission of the report required under subsection (b)(2), the Secretary of each military department shall, for each military installation with respect to which the Secretary has not determined under subsection (b)(2)(A) that preparation of an integrated natural resources management plan is not appropriate—

(1) prepare and begin implementing such a plan in accordance with section 101(a) of the Sikes Act (as amended by this title); or

(2) in the case of a military installation for which there is in effect a cooperative plan under section 101(a) of the Sikes Act on the day before the date of enactment of this Act, complete negotiations with the Secretary of the Interior and the heads of the appropriate State agencies regarding changes to the plan that are necessary for the plan to constitute an integrated natural resources management plan that complies with that section, as amended by this title.

(d) PUBLIC COMMENT.—The Secretary of each military department shall provide an opportunity for the submission of public comments on—

(1) integrated natural resources management plans proposed under subsection (c)(1); and

(2) changes to cooperative plans proposed under subsection (c)(2).

(A) the conservation and rehabilitation of natural resources on military installations;

(B) the sustainable multipurpose use of the resources, which shall include hunting, fishing, trapping, and nonconsumptive uses; and

(C) subject to safety requirements and military security, public access to military installations to facilitate the use.

(4) EFFECT ON OTHER LAW.—Nothing in this title—

(A)(i) affects any provision of a Federal law governing the conservation or protection of fish and wildlife resources; or

(ii) enlarges or diminishes the responsibility and authority of any State for the protection and management of fish and resident wildlife; or

(B) except as specifically provided in the other provisions of this section and in section 102, authorizes the Secretary of a military department to require a Federal license or permit to hunt, fish, or trap on a military installation.

(b) REQUIRED ELEMENTS OF PLANS.—Consistent with the use of military installations to ensure the preparedness of the Armed Forces, each integrated natural resources management plan prepared under subsection (a)—

(1) shall, to the extent appropriate and applicable, provide for—

(A) fish and wildlife management, land management, forest management, and fish- and wildlife-oriented recreation;

(B) fish and wildlife habitat enhancement or modifications;

(C) wetland protection, enhancement, and restoration, where necessary for support of fish, wildlife, or plants;

(D) integration of, and consistency among, the various activities conducted under the plan;

(E) establishment of specific natural resource management goals and objectives and time frames for proposed action;

(F) sustainable use by the public of natural resources to the extent that the use is not inconsistent with the needs of fish and wildlife resources;

(G) public access to the military installation that is necessary or appropriate for the use described in subparagraph (F), subject to requirements necessary to ensure safety and military security;

(H) enforcement of applicable natural resource laws (including regulations);

(I) no net loss in the capability of military installation lands to support the military mission of the installation; and

(J) such other activities as the Secretary of the military department determines appropriate;

(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years; and

(3) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the integrated natural resources management plan; except that—

(A) the Commanding Officer of the installation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect, spend, administer, and account for fees for the permits, acting as agent or agents for the State if the integrated natural resources management plan so provides, and

(B) the fees collected under this paragraph may not be expended with respect to other than the military installation on which collected, unless the military installation is subsequently closed, in which case the fees may be transferred to another military installation to be used for the same purposes.

(c) After an integrated natural resources management plan is agreed to under subsection (a)—

(1) no sale of land, or forest products from land, that is within a military installation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

(2) no leasing of land that is within the installation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purposes of the plan.

(d) With regard to the implementation and enforcement of integrated natural resources management plans agreed to under subsection (a)—

(1) neither Office of Management and Budget Circular A–76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

(e) Integrated natural resources management plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which chapter 63 of title 31, United States Code [1] applies.

(f) REVIEWS AND REPORTS.—

(1) SECRETARY OF DEFENSE.—Not later than March 1 of each year, the Secretary of Defense shall review the extent to which integrated natural resources management plans were prepared or were in effect and implemented in accordance with

[1] In subsection (e), a comma should be inserted after "United States Code".

this title in the preceding year, and submit a report on the findings of the review to the committees. Each report shall include—

(A) the number of integrated natural resources management plans in effect in the year covered by the report, including the date on which each plan was issued in final form or most recently revised;

(B) the amounts expended on conservation activities conducted pursuant to the plans in the year covered by the report; and

(C) an assessment of the extent to which the plans comply with this title.

(2) SECRETARY OF THE INTERIOR.—Not later than March 1 of each year and in consultation with the heads of State fish and wildlife agencies, the Secretary of the Interior shall submit a report to the committees on the amounts expended by the Department of the Interior and the State fish and wildlife agencies in the year covered by the report on conservation activities conducted pursuant to integrated natural resources management plans.

(3) DEFINITION OF COMMITTEES.—In this subsection, the term "committees" means—

(A) the Committee on Resources and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate.

SEC. 102. [16 U.S.C. 670b] The Secretary of Defense in cooperation with the Secretary of Interior and the appropriate State agency is authorized to carry out a program for the conservation, restoration and management of migratory game birds on military installations, including the issuance of special hunting permits and the collection of fees therefor, in accordance with an integrated natural resources management plan mutually agreed upon by the Secretary of Defense, the Secretary of the Interior and the appropriate State agency: *Provided,* That possession of a special permit for hunting migratory game birds issued pursuant to this title shall not relieve the permittee of the requirements of the Migratory Bird Hunting Stamp Act as amended nor of the requirements pertaining to State law set forth in Public Law 85–337.

SEC. 103. [16 U.S.C. 670c] PROGRAM FOR PUBLIC OUTDOOR RECREATION.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense is also authorized to carry out a program for the development, enhancement, operation, and maintenance of public outdoor recreation resources at military installations in accordance with an integrated natural resources management plan mutually agreed upon by the Secretary of Defense and the Secretary of the Interior, in consultation with the appropriate State agency designated by the State in which the installations are located.

(b) ACCESS FOR DISABLED VETERANS, MILITARY DEPENDENTS WITH DISABILITIES, AND OTHER PERSONS WITH DISABILITIES.—(1) In developing facilities and conducting programs for public outdoor recreation at military installations, consistent with the primary

military mission of the installations, the Secretary of Defense shall ensure, to the extent reasonably practicable, that outdoor recreation opportunities (including fishing, hunting, trapping, wildlife viewing, boating, and camping) made available to the public also provide access for persons described in paragraph (2) when topographic, vegetative, and water resources allow access for such persons without substantial modification to the natural environment.

(2) Persons referred to in paragraph (1) are the following:

(A) Disabled veterans.

(B) Military dependents with disabilities.

(C) Other persons with disabilities, when access to a military installation for such persons and other civilians is not otherwise restricted.

(3) The Secretary of Defense shall carry out this subsection in consultation with the Secretary of Veterans Affairs, national service, military, and veterans organizations, and sporting organizations in the private sector that participate in outdoor recreation projects for persons described in paragraph (2).

(c) ACCEPTANCE OF DONATIONS.—In connection with the facilities and programs for public outdoor recreation at military installations, in particular the requirement under subsection (b) to provide access for persons described in paragraph (2) of such subsection, the Secretary of Defense may accept—

(1) the voluntary services of individuals and organizations; and

(2) donations of property, whether real or personal.

(d) TREATMENT OF VOLUNTEERS.—A volunteer under subsection (c) shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(1) for the purposes of the tort claims provisions of chapter 171 of title 28, United States Code, the volunteer shall be considered to be a Federal employee; and

(2) for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, the volunteer shall be considered to be an employee, as defined in section 8101(1)(B) of title 5, United States Code, and the provisions of such subchapter shall apply.

SEC. 103a. [16 U.S.C. 670c–1] (a) The Secretary of a military department may enter into cooperative agreements with States, local governments, nongovernmental organizations, and individuals to provide for the maintenance and improvement of natural resources on, or to benefit natural and historic research on, Department of Defense installations.

(b) MULTIYEAR AGREEMENTS.—Funds appropriated to the Department of Defense for a fiscal year may be obligated to cover the cost of goods and services provided under a cooperative agreement entered into under subsection (a) or through an agency agreement under section 1535 of title 31, United States Code, during

any 18-month period beginning in that fiscal year, without regard to whether the agreement crosses fiscal years.

(c) Cooperative agreements entered into under this section shall be subject to the availability of funds and shall not be considered, nor be treated as, cooperative agreements to which chapter 63 of title 31, United States Code, applies.

SEC. 104. [16 U.S.C. 670d] The Department of Defense is held free from any liability to pay into the Treasury of the United States upon the operation of the program or programs authorized by this title any funds which may have been or may hereafter be collected, received or expended pursuant to, and for the purposes of, this title, and which collections, receipts and expenditures have been properly accounted for to the Comptroller General of the United States.

SEC. 105. [16 U.S.C. 670e] Nothing herein contained shall be construed to modify, amend or repeal any provision of Public Law 85–337, nor as applying to national forest lands administered pursuant to the provisions of section 9 of the Act of June 7, 1924 (43 Stat. 655), nor section 15 of the Taylor Grazing Act.

SEC. 106. FEDERAL ENFORCEMENT OF OTHER LAWS.

All Federal laws relating to the management of natural resources on Federal land may be enforced by the Secretary of Defense with respect to violations of the laws that occur on military installations within the United States.

SEC. 107. NATURAL RESOURCES MANAGEMENT SERVICES.

To the extent practicable using available resources, the Secretary of each military department shall ensure that sufficient numbers of professionally trained natural resources management personnel and natural resources law enforcement personnel are available and assigned responsibility to perform tasks necessary to carry out this title, including the preparation and implementation of integrated natural resources management plans.

SEC. 108. [16 U.S.C. 670f] (a) The Secretary of Defense shall expend such funds as may be collected in accordance with the integrated natural resources management plans agreed to under sections 101 and 102 and cooperative agreements agreed to under section 103a of this title, and for no other purpose. All funds that are so collected shall remain available until expended.

(b) There are authorized to be appropriated to the Secretary of Defense not to exceed $1,500,000 for each of the fiscal years 1998 through 2003, to carry out this title, including the enhancement of fish and wildlife habitat and the development of public recreation and other facilities, and to carry out such functions and responsibilities as the Secretary may have under cooperative agreements entered into under section 103a. The Secretary of Defense shall, to the greatest extent practicable, enter into agreements to utilize the services, personnel, equipment, and facilities, with or without reimbursement, of the Secretary of the Interior in carrying out the provisions of this section.

(c) There are authorized to be appropriated to the Secretary of the Interior not to exceed $3,000,000 for each of the fiscal years 1998 through 2003, to carry out such functions and responsibilities as the Secretary may have under integrated natural resources management plans to which such Secretary is a party under this section, including those for the enhancement of fish and wildlife habitat and the development of public recreation and other facilities.

(d) The Secretary of Defense and the Secretary of the Interior may each use any authority available to him under other laws relating to fish, wildlife, or plant conservation or rehabilitation for purposes of carrying out the provisions of this title.

3. SECTION 120 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

SEC. 120. [42 U.S.C. 9620] FEDERAL FACILITIES.

(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard

or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) ASSESSMENT AND EVALUATION.—

(1) IN GENERAL.—The Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(A) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) APPLICATION OF CRITERIA.—

(A) IN GENERAL.—Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the

same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) RESPONSE UNDER OTHER LAW.—It shall be an appropriate factor to be taken into consideration for the purposes of section 105(a)(8)(A) that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this Act, to a release or threatened release of a hazardous substance.

(3) COMPLETION.—Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(e) REQUIRED ACTION BY DEPARTMENT.—

(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party

under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) CONTENTS OF CERTAIN DEEDS.—

(A) IN GENERAL.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(i) to the extent such information is available on the basis of a complete search of agency files—

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) COVENANT REQUIREMENTS.—For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) DEFERRAL.—

(i) IN GENERAL.—The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities

List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) RESPONSE ACTION ASSURANCES.—With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that—

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) WARRANTY.—When all response action necessary to protect human health and the environment

with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) FEDERAL RESPONSIBILITY.—A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under sections 106, 107, and 120 existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) IDENTIFICATION OF UNCONTAMINATED PROPERTY.—(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after such date of enactment.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of

such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(II) 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).

(III) Section 2687 of title 10, United States Code.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) NOTIFICATION OF STATES REGARDING CERTAIN LEASES.—In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

(j) NATIONAL SECURITY.—

(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.

4. SECTION 6001 OF THE SOLID WASTE DISPOSAL ACT

APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL FACILITIES

SEC. 6001. [42 U.S.C. 6961] (a) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprison-

ment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) LIMITATION ON STATE USE OF FUNDS COLLECTED FROM FEDERAL GOVERNMENT.—Unless a State law in effect on the date of the enactment of the Federal Facility Compliance Act of 1992 or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

H. DEFENSE INDUSTRIAL BASE AND ECONOMIC CONVERSION AND TRANSITION

1. SELECTED PROVISIONS FROM DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE ACTS

a. Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994

(Title XI of the National Defense Authorization Act for Fiscal Year 1995; Public Law 103–337, approved Oct. 5, 1994)

TITLE XI—DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE

SEC. 1101. SHORT TITLE.

This title may be cited as the "Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994".

* * * * * * *

Subtitle C—Personnel Adjustment, Education, and Training Programs

* * * * * * *

SEC. 1133. PILOT PROGRAM TO PLACE SEPARATED MEMBERS AND TERMINATED DEFENSE EMPLOYEES IN TEACHING POSITIONS AS BILINGUAL MATH AND SCIENCE TEACHERS.

(a) COOPERATIVE ARRANGEMENTS.—During fiscal year 1995, the Secretary of Defense shall carry out a pilot program to establish cooperative arrangements between the Department of Defense and a consortium of two or more entities described in subsection (b) for the purpose of assisting bilingual members of the Armed Forces after their separation from active duty, and bilingual civilian employees of the Department of Defense after the termination of their employment, in obtaining certification and employment as bilingual elementary or secondary school teachers in mathematics or science.

(b) ELIGIBLE ENTITIES.—The entities with which the Secretary of Defense may enter into a cooperative arrangement under the pilot program are as follows:

(1) Local governments of States that contain military installations and a high concentration of students who would benefit from the increased presence of bilingual elementary or secondary school teachers in mathematics or science.

(2) A consortium of two or more institutions of higher education that have a demonstrated background, expertise, and experience in operating bilingual teacher training programs in mathematics and science with an emphasis in English as a second language.

(c) ELIGIBLE MEMBERS AND EMPLOYEES.—(1) A member of the Armed Forces shall be eligible to participate in a cooperative arrangement established under the pilot program if the member—

(A) during the seven-year period beginning on October 1, 1992, is discharged or released from active duty after six or more years of continuous active duty immediately before the discharge or release;

(B) has received a baccalaureate or advanced degree from an accredited institution of higher education;

(C) is bilingual; and

(D) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) A civilian employee of the Department of Defense shall be eligible to participate in a cooperative arrangement established under the pilot program 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;

(B) has received a baccalaureate or advanced degree from an accredited institution of higher education;

(C) is bilingual; and

(D) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(d) STIPEND FOR PARTICIPANTS.—A member of the Armed Forces or a civilian employee of the Department of Defense who participates in a cooperative arrangement established under the pilot program shall be eligible to receive an educational stipend in the same amount as provided under paragraph (1) of subsection (g) of section 1151 of title 10, United States Code, subject to the conditions specified in paragraphs (2) and (3) of such subsection and section 1598(e)(2) of such title.

(e) ADMINISTRATIVE COSTS.—The Secretary of Defense shall cover the reasonable management costs of the pilot program incurred by the non-Federal entities participating in the cooperative arrangements established under the pilot program.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "bilingual" means the ability to communicate in both English and another language.

(2) 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.

(g) FUNDING FOR FISCAL YEAR 1995.—Of the amount made available pursuant to section 1102(a), $5,000,000 shall be available to the Secretary of Defense to carry out this section.

SEC. 1134. DEMONSTRATION PROJECT TO ASSIST SEPARATED MEMBERS AND TERMINATED DEFENSE WORKERS TO BECOME BUSINESS OWNERS.

(a) BUSINESS OWNERSHIP DEMONSTRATION PROJECT.—During fiscal year 1995, the Secretary of Defense may carry out a demonstration project in not more than two eligible communities to assist separated members of the Armed Forces and terminated defense workers described in subsection (c) who reside in such communities to own their own businesses. The Secretary shall carry out the demonstration project in consultation with the Secretary of Commerce.

(b) ELIGIBLE COMMUNITIES.—To be eligible for selection by the Secretary of Defense as a site for the demonstration project, a community shall meet at least two of the following conditions:

(1) The local economy is heavily dependent on a defense contractor that is in the process of terminating a major defense contract (or having such contract terminated by the Department of Defense) or closing a major facility.

(2) The local economy may be adversely affected by changes in the use of a national laboratory previously engaged in the testing of nuclear weapons.

(3) The local economy would be adversely affected by the closure of two or more military installations.

(c) PERSONS ELIGIBLE FOR ASSISTANCE.—The following persons are eligible to participate in the demonstration project to own their own businesses:

(1) Members of the Armed Forces who are discharged or released from active duty.

(2) Civilian employees of the Department of Defense who are 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.

(3) Employees of defense contractors who are terminated or laid off (or receive a notice of termination or layoff) as a result of the completion or termination of a defense contract or program or reductions in defense spending, as determined by the Secretary of Defense.

(d) ACTIVITIES UNDER DEMONSTRATION PROJECT.—Under the demonstration project, the Secretary of Defense shall—

(1) develop a business plan to establish a facility in each community in which the demonstration project is conducted to assist persons described in subsection (c) to own their own businesses;

(2) conduct a market study to identify markets for the facility;

(3) develop innovative approaches to capital formation for the facility and persons described in subsection (c);

(4) conduct a skills assessment study to determine the number and type of employees needed to operate the facility; and

(5) analyze the potential to use persons described in subsection (c) as employees of the facility.

SEC. 1135. DEMONSTRATION PROJECT TO PROMOTE SHIP RECYCLING AS A METHOD TO ASSIST SEPARATED MEMBERS AND TERMINATED DEFENSE WORKERS.

(a) SHIP RECYCLING DEMONSTRATION PROJECT.—(1) Subject to paragraph (2), the Secretary of Defense may carry out a demonstration project in not more than three eligible locations to assist separated members of the Armed Forces and terminated defense workers described in subsection (c) to obtain employment by participating in the establishment and operation of ship recycling facilities. To carry out the demonstration project, the Secretary shall seek the participation of representatives of the ship recycling industry.

(2) The Secretary of Defense may not implement or carry out the demonstration project unless the Secretary certifies to Congress not later than 180 days after the date of the enactment of this Act that—

(A) the demonstration project will facilitate personnel transition programs of the Department of Defense; and

(B) activities under the demonstration project will not disrupt the operations of United States companies that are engaged in ship recycling and scrapping as of the date of the enactment of this Act.

(b) ELIGIBLE LOCATIONS.—A location shall be eligible for selection by the Secretary of Defense as a site for the demonstration project if the location contains one or more military installations that have been selected for closure or realignment pursuant to a base closure law and such installations include naval and port facilities. Competitive procedures shall be used in the selection of locations in which to conduct the demonstration project.

(c) PERSONS ASSISTED UNDER DEMONSTRATION PROJECT.—The demonstration project is intended to promote the establishment and operation of ship recycling facilities that will provide employment for the following persons:

(1) Members of the Armed Forces who are discharged or released from active duty.

(2) Civilian employees of the Department of Defense who are 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.

(3) Employees of defense contractors who are terminated or laid off (or receive a notice of termination or layoff) as a result of the completion or termination of a defense contract or program or reductions in defense spending, as determined by the Secretary of Defense.

(d) ASSISTANCE AUTHORIZED.—To carry out the demonstration project in an eligible location selected by the Secretary, the Secretary may make grants to, and enter into contracts and cooperative agreements with, State governments, local governments, private entities, nonprofit organizations, and institutions of higher education operating in that location.

(e) ACTIVITIES SUPPORTED.—A government or entity (or group of entities) receiving assistance under the demonstration project shall use the assistance to perform, or support the performance of, any of the following:

(1) Developing a business plan to establish a ship recycling facility for military and commercial ships currently in service and projected for future scrapping.

(2) In consultation with the private sector, conducting a market study of—

(A) the existing private sector capacity to perform ship recycling;

(B) the utilization of existing ship recycling capacity;

(C) the regional impact on markets for scrap generated from ship recycling;

(D) the environmental remediation requirements associated with ship recycling;

(E) the ability to incorporate the private sector into the ship recycling facilities established pursuant to the demonstration project; and

(F) such other issues related to ship recycling as the Secretary considers appropriate.

(3) Conducting a skills assessment study to determine the number and type of employees needed to operate a ship recycling facility.

(4) Developing plans for the cost-effective environmental remediation of ships to be recycled at the facility.

(5) Demonstrating the feasibility of a ship recycling facility to become financially self-sustaining or projecting a reasonable timetable for the completion of the demonstration project, in which case the entity shall develop training, skills enhancement, and career placement programs to assist employees involved in ship recycling to secure new occupations and careers.

(6) Supporting regional ship recycling start-up activities.

(7) Analyzing the potential to use persons described in subsection (c) as employees at a ship recycling facility.

(f) TRANSFER OF EXCESS NAVAL VESSELS.—The Secretary of Defense may allocate among the ship recycling facilities established under the demonstration project excess naval vessels of the United States for recycling.

(g) FUNDING FOR FISCAL YEAR 1995.—Of the amount made available pursuant to section 1102(a), $7,500,000 shall be available to the Secretary of Defense to carry out the demonstration project if the Secretary of Defense makes the certification under subsection (a)(2) within the time period specified in such subsection.

---

b. Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993

(Title XIII of the National Defense Authorization Act for Fiscal Year 1994; Public Law 103–160, approved Nov. 30, 1993)

TITLE XIII—DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE

SEC. 1301. SHORT TITLE.

This title may be cited as the "Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993".

* * * * * * *

Subtitle C—Personnel Adjustment, Education, and Training Programs

* * * * * * *

SEC. 1333. [10 U.S.C. 2701 note] GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE EDUCATION AND TRAINING IN ENVIRONMENTAL RESTORATION TO DISLOCATED DEFENSE WORKERS AND YOUNG ADULTS.

(a) GRANT PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a program to provide demonstration grants to institutions of higher education to assist such institutions in providing education and training in environmental restoration and hazardous waste management to eligible dislocated defense workers and young adults described in subsection (d). The Secretary shall award the grants pursuant to a merit-based selection process.

(2) A grant provided under this subsection may cover a period of not more than three fiscal years, except that the payments under the grant for the second and third fiscal year shall be subject to the approval of the Secretary and to the availability of appropriations to carry out this section in that fiscal year.

(b) APPLICATION.—To be eligible for a grant under subsection (a), an institution of higher education shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require. The application shall include the following:

(1) An assurance by the institution of higher education that it will use the grant to supplement and not supplant non-Federal funds that would otherwise be available for the education and training activities funded by the grant.

(2) A proposal by the institution of higher education to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities.

(c) USE OF GRANT FUNDS.—(1) An institution of higher education receiving a grant under subsection (a) shall use the grant to establish a consortium consisting of the institution and one or more of each of the entities described in paragraph (2) for the purpose of establishing and conducting a program to provide education and training in environmental restoration and waste management to eligible individuals described in subsection (d). To the extent practicable, the Secretary shall authorize the consortium to use a military installation closed or selected to be closed under a base closure law in providing on-site basic skills training to participants in the program.

(2) The entities referred to in paragraph (1) are the following:

(A) Appropriate State and local agencies.

(B) Local workforce investment boards established under section 117 of the Workforce Investment Act of 1998.

(C) Community-based organizations (as defined in section 4(5) of such Act (29 U.S.C. 1503(5)).

(D) Businesses.

(E) Organized labor.

(F) Other appropriate educational institutions.

(d) ELIGIBLE INDIVIDUALS.—A program established or conducted using funds provided under subsection (a) may provide education and training in environmental restoration and waste management to—

(1) individuals who have been terminated or laid off from employment (or have received notice of termination or lay off) as a consequence of reductions in expenditures by the United States for defense, the cancellation, termination, or completion of a defense contract, or the closure or realignment of a military installation under a base closure law, as determined in accordance with regulations prescribed by the Secretary; or

(2) individuals who have attained the age of 16 but not the age of 25.

(e) ELEMENTS OF EDUCATION AND TRAINING PROGRAM.—In establishing or conducting an education and training program using funds provided under subsection (a), the institution of higher education shall meet the following requirements:

(1) The institution of higher education shall establish and provide a work-based learning system consisting of education and training in environmental restoration—

(A) which may include basic educational courses, on-site basic skills training, and mentor assistance to individuals described in subsection (d) who are participating in the program; and

(B) which may lead to the awarding of a certificate or degree at the institution of higher education.

(2) The institution of higher education shall undertake outreach and recruitment efforts to encourage participation by eligible individuals in the education and training program.

(3) The institution of higher education shall select participants for the education and training program from among eligible individuals described in paragraph (1) or (2) of subsection (d).

(4) To the extent practicable, in the selection of young adults described in subsection (d)(2) to participate in the education and training program, the institution of higher education shall give priority to those young adults who—

(A) have not attended and are otherwise unlikely to be able to attend an institution of higher education; or

(B) have, or are members of families who have, received a total family income that, in relation to family size, is not in excess of the higher of—

(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))); or

(ii) 70 percent of the lower living standard income level.

(5) To the extent practicable, the institution of higher education shall select instructors for the education and training program from institutions of higher education, appropriate community programs, and industry and labor.

(6) To the extent practicable, the institution of higher education shall consult with appropriate Federal, State, and local agencies carrying out environmental restoration programs for the purpose of achieving coordination between such programs and the education and training program conducted by the consortium.

(f) SELECTION OF GRANT RECIPIENTS.—To the extent practicable, the Secretary shall provide grants to institutions of higher education under subsection (a) in a manner which will equitably distribute such grants among the various regions of the United States.

(g) LIMITATION ON AMOUNT OF GRANT TO A SINGLE RECIPIENT.—The amount of a grant under subsection (a) that may be made to a single institution of higher education in a fiscal year may not exceed ⅓ of the amount made available to provide grants under such subsection for that fiscal year.

(h) REPORTING REQUIREMENTS.—(1) The Secretary may provide a grant to an institution of higher education under subsection (a) only if the institution agrees to submit to the Secretary, in each fiscal year in which the Secretary makes payments under the grant to the institution, a report containing—

(A) a description and evaluation of the education and training program established by the consortium formed by the institution under subsection (c); and

(B) such other information as the Secretary may reasonably require.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to the President and Congress an interim report containing—

(A) a compilation of the information contained in the reports received by the Secretary from each institution of higher education under paragraph (1); and

(B) an evaluation of the effectiveness of the demonstration grant program authorized by this section.

(3) Not later than January 1, 1997, the Secretary shall submit to the President and Congress a final report containing—

(A) a compilation of the information described in the interim report; and

(B) a final evaluation of the effectiveness of the demonstration grant program authorized by this section, including a recommendation as to the feasibility of continuing the program.

(i) DEFINITIONS.—For purposes of this section:

(1) BASE CLOSURE LAW.—The term "base closure law" means the following:

(A) 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).

(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) Section 2687 of title 10, United States Code.

(D) Any other similar law enacted after the date of the enactment of this Act.

(2) ENVIRONMENTAL RESTORATION.—The term "environmental restoration" means actions taken consistent with a permanent remedy to prevent or minimize the release of hazardous substances into the environment so that such substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(3) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965.

(4) SECRETARY.—The term "Secretary" means the Secretary of Defense.

(j) CONFORMING REPEAL.—[Omitted—Amendment]

SEC. 1334. [10 U.S.C. 2701 note] ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM.

(a) AUTHORITY.—The Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, may establish a scholarship program in order to enable eligible individuals described in subsection (d) to undertake the educational training or activities relating to environmental engineering, environmental sciences, or environmental project management in fields related to hazardous waste management and cleanup described in subsection (b) at the institutions of higher education described in subsection (c).

(b) EDUCATIONAL TRAINING OR ACTIVITIES.—(1) The program established under subsection (a) shall be limited to educational training or activities related to—

(A) site remediation;

(B) site characterization;

(C) hazardous waste management;

(D) hazardous waste reduction;

(E) recycling;

(F) process and materials engineering;

(G) training for positions related to environmental engineering, environmental sciences, or environmental project management (including training for management positions); and

(H) environmental engineering with respect to the construction of facilities to address the items described in subparagraphs (A) through (G).

(2) The program established under subsection (a) shall be limited to educational training or activities designed to enable individuals to achieve specialization in the following fields:

(A) Earth sciences.

(B) Chemistry.

(C) Chemical Engineering.

(D) Environmental engineering.

(E) Statistics.

(F) Toxicology.

(G) Industrial hygiene.

(H) Health physics.

(I) Environmental project management.

(c) ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION.—Scholarship funds awarded under this section shall be used by individuals awarded scholarships to enable such individuals to attend institu-

tions of higher education associated with hazardous substance research centers to enable such individuals to undertake a program of educational training or activities described in subsection (b) that leads to an undergraduate degree, a graduate degree, or a degree or certificate that is supplemental to an academic degree.

(d) ELIGIBLE INDIVIDUALS.—Individuals eligible for scholarships under the program established under subsection (a) are the following:

(1) Any member of the Armed Forces who—

(A) was on active duty or full-time National Guard duty on September 30, 1990;

(B) during the 5-year period beginning on that date—

(i) is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title; and

(C) is not entitled to retired or retainer pay incident to that separation.

(2) Any civilian employee of the Department of Energy or the Department of Defense (other than an employee referred to in paragraph (3)) who—

(A) is terminated or laid off from such employment during the five-year period beginning on September 30, 1990, as a result of reductions in defense-related spending (as determined by the appropriate Secretary); and

(B) is not entitled to retired or retainer pay incident to that termination or lay off.

(3) Any civilian employee of the Department of Defense whose employment at a military installation approved for closure or realignment under a base closure law is terminated as a result of such closure or realignment.

(e) AWARD OF SCHOLARSHIP.—(1)(A) The Secretary of Defense shall award scholarships under this section to such eligible individuals as the Secretary determines appropriate pursuant to regulations or policies promulgated by the Secretary.

(B) In awarding a scholarship under this section, the Secretary shall—

(i) take into consideration the extent to which the qualifications and experience of the individual applying for the scholarship prepared such individual for the educational training or activities to be undertaken; and

(ii) award a scholarship only to an eligible individual who has been accepted for enrollment in the institution of higher education described in subsection (c) and providing the educational training or activities for which the scholarship assistance is sought.

(2) The Secretary of Defense shall determine the amount of the scholarships awarded under this section, except that the amount of scholarship assistance awarded to any individual under this section may not exceed—

(A) $10,000 in any 12-month period; and

(B) a total of $20,000.

(f) APPLICATION; PERIOD FOR SUBMISSION.—(1) Each individual desiring a scholarship under this section shall submit an application to the Secretary of Defense in such manner and containing or accompanied by such information as the Secretary may reasonably require.

(2) A member of the Armed Forces described in subsection (d)(1) who desires to apply for a scholarship under this section shall submit an application under this subsection not later than 180 days after the date of the separation of the member. In the case of members described in subsection (d)(1) who were separated before the date of the enactment of this Act, the Secretary shall accept applications from these members submitted during the 180-day period beginning on the date of the enactment of this Act.

(3) A civilian employee described in paragraph (2) or (3) of subsection (d) who desires to apply for a scholarship under this section, but who receives no prior notice of such termination or lay off, may submit an application under this subsection at any time after such termination or lay off. A civilian employee described in paragraph (1) or (2) of subsection (d) who receives a notice of termination or lay off shall submit an application not later than 180 days before the effective date of the termination or lay off. In the case of employees described in such paragraphs who were terminated or laid off before the date of the enactment of this Act, the Secretary shall accept applications from these employees submitted during the 180-day period beginning on the date of the enactment of this Act.

(g) REPAYMENT.—(1) Any individual receiving scholarship assistance from the Secretary of Defense under this section shall enter into an agreement with the Secretary under which the individual agrees to pay to the United States the total amount of the scholarship assistance provided to the individual by the Secretary under this section, plus interest at the rate prescribed in paragraph (4), if the individual does not complete the educational training or activities for which such assistance is provided.

(2) If an individual fails to pay to the United States the total amount required pursuant to paragraph (1), including the interest, at the rate prescribed in paragraph (4), the unpaid amount shall be recoverable by the United States from the individual or such individual's estate by—

(A) in the case of an individual who is an employee of the United States, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

(B) such other method as is provided by law for the recovery of amounts owing to the United States.

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

(4) The total amount of scholarship assistance provided to an individual under this section, for purposes of repayment under this

subsection, shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(h) COORDINATION OF BENEFITS.—Any scholarship assistance provided to an individual under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(i) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit to the Congress a report describing the activities undertaken under the program authorized by subsection (a) and containing recommendations for future activities under the program.

(j) FUNDING.—(1) To carry out the scholarship program authorized by subsection (a), the Secretary of Defense may use the unobligated balance of funds made available pursuant to section 4451(k) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2701 note) for fiscal year 1993 for environmental scholarship and fellowship programs for the Department of Defense.

(2) The cost of carrying out the program authorized by subsection (a) may not exceed $8,000,000 in any fiscal year.

(k) DEFINITIONS.—For purposes of this section:

(1) The term "base closure law" means the following:

(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) The term "hazardous substance research centers" means the hazardous substance research centers described in section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(d)). Such term includes the Great Plains and Rocky Mountain Hazardous Substance Research Center, the Northeast Hazardous Substance Research Center, the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the South and Southwest Hazardous Substance Research Center, and the Western Region Hazardous Substance Research Center.

(3) The term "institution of higher education" has the same meaning given such term in section 101 of the Higher Education Act of 1965.

SEC. 1335. [10 U.S.C. 2701 note] TRAINING AND EMPLOYMENT OF DEPARTMENT OF DEFENSE EMPLOYEES TO CARRY OUT ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS TO BE CLOSED.

(a) TRAINING PROGRAM.—The Secretary of Defense may establish a program to provide such training to eligible civilian employees of the Department of Defense as the Secretary considers to be necessary to qualify such employees to carry out environmental

assessment, remediation, and restoration activities (including asbestos abatement) at military installations closed or to be closed.

(b) EMPLOYMENT OF GRADUATES.—In the case of eligible civilian employees of the Department of Defense who successfully complete the training program established pursuant to subsection (a), the Secretary may—

(1) employ such employees to carry out environmental assessment, remediation, and restoration activities at military installations referred to in subsection (a); or

(2) require, as a condition of a contract for the private performance of such activities at such an installation, the contractor to be engaged in carrying out such activities to employ such employees.

(c) ELIGIBLE EMPLOYEES.—Eligibility for selection to participate in the training program under subsection (a) shall be limited to those civilian employees of the Department of Defense whose employment would be terminated by reason of the closure of a military installation if not for the selection of the employees to participate in the training program.

(d) PRIORITY IN TRAINING AND EMPLOYMENT.—The Secretary shall give priority in providing training and employment under this section to eligible civilian employees employed at a military installation the closure of which will directly result in the termination of the employment of at least 1,000 civilian employees of the Department of Defense.

(e) EFFECT ON OTHER ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall be construed to revise or modify any requirement established under Federal or State law relating to environmental assessment, remediation, or restoration activities at military installations closed or to be closed.

* * * * * * *

SEC. 1337. [10 U.S.C. 1143 note] DEMONSTRATION PROGRAM FOR THE TRAINING OF RECENTLY DISCHARGED VETERANS FOR EMPLOYMENT IN CONSTRUCTION AND IN HAZARDOUS WASTE REMEDIATION.

(a) ESTABLISHMENT.—The Secretary of Defense may establish a demonstration program to promote the training and employment of veterans in the construction and hazardous waste remediation industries. Using funds made available to carry out this section the Secretary shall make grants under the demonstration program to organizations that meet the eligibility criteria specified in subsection (b).

(b) GRANT ELIGIBILITY CRITERIA.—An organization is eligible to receive a grant from the Secretary under subsection (a) if it—

(1) demonstrates, to the satisfaction of the Secretary, an ability to recruit and counsel veterans for participation in the demonstration program under this section;

(2) has entered into an agreement with a joint labor-management training fund established consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)) to implement and operate a training and employment program for veterans;

(3) agrees under the agreement referred to in paragraph (2) to use grant funds to carry out a program that will provide

eligible veterans with training for employment in the construction and hazardous waste remediation industries;

(4) provides such training for an eligible veteran for not more than 18 months;

(5) demonstrates actual experience in providing training for veterans under an agreement referred to in paragraph (2);

(6) agrees to make, along with all subgrantees, a substantial in-kind contribution (as determined by the Secretary of Defense) from non-Federal sources to the demonstration program under this section; and

(7) gives its assurances, to the satisfaction of the Secretary, that full time, permanent jobs will be available for individuals successfully completing the training program, with a special emphasis on jobs with employers in construction and hazardous waste remediation on Department of Defense facilities.

(c) ELIGIBLE VETERANS.—An individual is an eligible veteran for the purposes of this section if the individual—

(1)(A) served in the active military, naval, or air service for a period of at least two years;

(B) was discharged or released from active duty because of a service-connected disability; or

(C) 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; and

(2) was discharged or released on or after August 2, 1990, under conditions other than dishonorable.

(d) PREFERENCE.—In carrying out the demonstration program under this section, the Secretary shall ensure that a preference is given to eligible veterans who had a primary or secondary occupational specialty in the Armed Forces that (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) is not readily transferable to the civilian work force.

(e) HAZARDOUS WASTE OPERATIONS TRAINING GOAL.—It is the sense of Congress that at least 20 percent of the total number of veterans completing training under the demonstration program under this section should complete the training required—

(1) for certification under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (29 U.S.C. 655 note); and

(2) under any other Federal law which requires certification for employees engaged in hazardous waste remediation operations.

(f) USE OF FUNDS.—Funds made available to carry out this section may only be used for tuition and stipends to cover the living and travel expenses of participants, except that the Secretary may provide that not more than a total of four percent of all the funds made available under this section may be used for administrative expenses of grantees and subgrantees.

(g) LIMITATION ON TUITION CHARGED.—The amount of tuition charged eligible veterans participating in a training program funded under the demonstration program may not exceed the

amount of tuition charged to nonveterans participating in programs substantially similar to that training program.

(h) LIMITATION ON EXPENDITURES PER PARTICIPANT.—Of the funds made available to carry out this section—

(1) not more than $1,000 may be expended with respect to each veteran participating in the construction phase of the demonstration program; and

(2) not more than an additional $1,000 may be expended with respect to each veteran participating in the hazardous waste remediation phase of the demonstration program, except that the Secretary may authorize an additional $300 for the training of a veteran participating in such phase if the Secretary determines that such additional amount is necessary because of the type of training needed for the particular kind of hazardous waste remediation involved.

(i) REPORTS.—(1) Not later than November 1, 1994, the Secretary shall submit to Congress an interim report describing the manner in which the demonstration program under this section is being carried out, including a detailed description of the number of grants made, the number of veterans involved, the kinds of training received, and any job placements that have occurred or that are anticipated.

(2) Not later than December 31, 1995, the Secretary shall submit to Congress a final report containing a description of the results of the demonstration program with a detailed description of the number of grants made, the number of veterans involved, the number of veterans who completed the program, the number of veterans who were placed in jobs, the number of veterans who failed to complete the program along with the reasons for such failure, and any recommendations the Secretary considers to be appropriate.

(j) DEFINITIONS.—For purposes of this section, the terms "veteran", "service-connected", "active duty", and "active military, naval, or air service" have the meanings given such terms in paragraphs (2), (16), (21), and (24), respectively, of section 101 of title 38, United States Code.

(k) TERMINATION.—Not later than October 1, 1994, the Secretary shall obligate, in accordance with the provisions of this section, the funds made available to carry out the demonstration program under this section.

* * * * * * *

Subtitle E—Other Matters

* * * * * * *

SEC. 1373. [29 U.S.C. 1662d–1 note] REGIONAL RETRAINING SERVICES CLEARINGHOUSES.

(a) ESTABLISHMENT REQUIRED.—The Secretary of Labor, in consultation with the Secretary of Defense, may carry out a demonstration project to establish one or more regional retraining services clearinghouses to serve eligible persons described in subsection (b).

(b) PERSONS ELIGIBLE FOR CLEARINGHOUSE SERVICES.—The following persons shall be eligible to receive services through the clearinghouses:

(1) Members of the Armed Forces who are discharged or released from active duty.

(2) Civilian employees of the Department of Defense who are 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.

(3) Employees of defense contractors who are terminated or laid off (or receive a 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, as determined by the Secretary of Defense.

(c) INFORMATIONAL ACTIVITIES OF CLEARINGHOUSES.—The clearinghouses shall—

(1) collect educational materials that have been prepared for the purpose of providing information regarding available retraining programs, in particular those programs dealing with critical skills needed in advanced manufacturing and skill areas in which shortages of skilled employees exist;

(2) establish and maintain a data base for the purpose of storing and categorizing such materials based on the different needs of eligible persons; and

(3) furnish such materials, upon request, to educational institutions and other interested persons.

(d) FUNDING.—From the unobligated balance of funds made available pursuant to section 4465(c) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 29 U.S.C. 1662d–1 note) to carry out section 325A of the Job Training Partnership Act (29 U.S.C. 1662d–1), not more than $10,000,000 shall be available to the Secretary of Labor to carry out this section during fiscal year 1994. Funds made available under section 1302 for defense conversion, reinvestment, and transition assistance programs shall not be used to carry out this section.

---

c. Defense Conversion, Reinvestment, and Transition Assistance Act of 1992

(Division D of the National Defense Authorization Act for Fiscal Year 1993; Public Law 102–484, approved Oct. 23, 1992)

DIVISION D—DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE

SEC. 4001. [10 U.S.C. 2491 note] SHORT TITLE.

This division may be cited as the "Defense Conversion, Reinvestment, and Transition Assistance Act of 1992".

* * * * * * *

TITLE XLIV—PERSONNEL ADJUSTMENT, EDUCATION, AND TRAINING PROGRAMS

* * * * * * *

Subtitle C—Department of Defense Civilian Personnel Transition Initiatives

* * * * * * *

SEC. 4435. [10 U.S.C. 1597 note] SKILL TRAINING PROGRAMS IN THE DEPARTMENT OF DEFENSE.

(a) AUTHORITY.—(1) Under regulations prescribed by the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Defense with respect to employees of the Department of Defense other than employees of the military departments, may provide not more than one year of training in training facilities of the Department to civilian employees of the Department of Defense who are separated from employment as a result of a reduction in force or a closure or realignment of a military installation.

(2) Training may be provided under this subsection during the period beginning on October 1, 1992, and ending on September 30, 1995.

(b) REGISTER OF TRAINING PROGRAMS.—Not later than February 1, 1993, the Secretary of Defense, in consultation with the Secretary of Labor and the Director of the Office of Personnel Management, shall publish a register of the skill training programs carried out by the Department of Defense. The register shall—

(1) include a list of the skill training programs;

(2) provide information on the location of such programs, the training provided under such programs, and the number of persons who may receive training under such programs; and

(3) identify the programs that provide training in skills that are useful to employees in the civilian work force.

* * * * * * *

Subtitle E—Environmental Education and Retraining Provisions

SEC. 4451. [10 U.S.C. 2701 note] ENVIRONMENTAL SCHOLARSHIP AND FELLOWSHIP PROGRAMS FOR THE DEPARTMENT OF DEFENSE.

(a) ESTABLISHMENT.—The Secretary of Defense (hereinafter in this section referred to as the "Secretary") may conduct scholarship and fellowship programs for the purpose of enabling individuals to qualify for employment in the field of environmental restoration or other environmental programs in the Department of Defense.

(b) ELIGIBILITY.—To be eligible to participate in the scholarship or fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965);

(2) be pursuing a program of education that leads to an appropriate higher education degree in engineering, biology, chemistry, or another qualifying field related to environmental activities, as determined by the Secretary;

(3) sign an agreement described in subsection (c);

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet any other requirements prescribed by the Secretary.

(c) AGREEMENT.—An agreement between the Secretary and an individual participating in a scholarship or fellowship established in subsection (a) shall be in writing, shall be signed by the individual, and shall include the following provisions:

(1) The agreement of the Secretary to provide the individual with educational assistance for a specified number of school years (not to exceed 5 years) during which the individual is pursuing a course of education in a qualifying field. The assistance may include payment of tuition, fees, books, laboratory expenses, and (in the case of a fellowship) a stipend.

(2) The agreement of the individual to perform the following:

(A) Accept such educational assistance.

(B) Maintain enrollment and attendance in the educational program until completed.

(C) Maintain, while enrolled in the educational program, satisfactory academic progress as prescribed by the institution of higher education in which the individual is enrolled.

(D) Serve, upon completion of the educational program and selection by the Secretary under subsection (e), as a full-time employee in an environmental restoration or other environmental position in the Department of Defense for the applicable period of service specified in subsection (d).

(d) PERIOD OF SERVICE.—The period of service required under subsection (c)(2)(D) is as follows:

(1) For an individual who completes a bachelor's degree under a scholarship program established under subsection (a), a period of 12 months for each school year or part thereof for which the individual is provided a scholarship under the program.

(2) For an individual who completes a master's degree or other post-graduate degree under a fellowship program established under subsection (a), a period of 24 months for each school year or part thereof for which the individual is provided a fellowship under the program.

(e) SELECTION FOR SERVICE.—The Secretary shall annually review the number and performance under the agreement of individuals who complete educational programs during the preceding year under any scholarship and fellowship programs conducted pursuant to subsection (a). From among such individuals, the Secretary shall select individuals for environmental positions in the Department of Defense, based on the type and availability of such positions.

(f) REPAYMENT.—(1) Any individual participating in a scholarship or fellowship program under this section shall agree to pay to the United States the total amount of educational assistance provided to the individual under the program, plus interest at the rate prescribed in paragraph (4), if—

(A) the individual does not complete the educational program as agreed to pursuant to subsection (c)(2)(B), or is se-

lected by the Secretary under subsection (e) but declines to serve, or fails to complete the service, in a position in the Department of Defense as agreed to pursuant to subsection (c)(2)(D); or

(B) the individual is involuntarily separated for cause from the Department of Defense before the end of the period for which the individual has agreed to continue in the service of the Department of Defense.

(2) If an individual fails to fulfill the agreement of the individual to pay to the United States the total amount of educational assistance provided under a program established under subsection (a), plus interest at the rate prescribed in paragraph (4), a sum equal to the amount of the educational assistance (plus such interest, if applicable) shall be recoverable by the United States from the individual or his estate by—

(A) in the case of an individual who is an employee of the Department of Defense or other Federal agency, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

(B) such other method provided by law for the recovery of amounts owing to the United States.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) The total amount of educational assistance provided to an individual under a program established under subsection (a) shall, for purposes of repayment under this section, bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(g) PREFERENCE.—In evaluating applicants for the award of a scholarship or fellowship under a program established under subsection (a), the Secretary shall give a preference to—

(1) individuals who are, or have been, employed by the Department of Defense or its contractors and subcontractors who have been engaged in defense-related activities; and

(2) individuals who are or have been members of the Armed Forces.

(h) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(i) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—The Secretary may award to qualified applicants not more than 100 scholarships (for undergraduate students) and not more than 30 fellowships (for graduate students) in fiscal year 1993.

(j) REPORT TO CONGRESS.—Not later than January 1, 1994, the Secretary shall submit to the Congress a report on activities undertaken under the programs established under subsection (a) and recommendations for future activities under the programs.

(k) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301(5)—

(1) $7,000,000 shall be available to carry out the scholarship and fellowship programs established in subsection (a); and

(2) $3,000,000 shall be available to provide training to Department of Defense personnel to obtain the skills required to comply with existing environmental statutory and regulatory requirements.

* * * * * * *

Subtitle F—Job Training and Employment and Educational Opportunities

SEC. 4461. [10 U.S.C. 1143 note] 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. 4463. [10 U.S.C. 1143a note] 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. [10 U.S.C. 1143a note] 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 in-

cluded 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. 4466. [10 U.S.C. 1143 note] 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 the date of the enactment of this Act, 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 the date of the enactment of this Act, the period for participation in the program shall be two years from the date of the enactment of this Act.

(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.

* * * * * * *

SEC. 4468. [29 U.S.C. 1662d–1 note] JOB BANK PROGRAM FOR DISCHARGED MILITARY PERSONNEL, TERMINATED DEFENSE EMPLOYEES, AND DISPLACED EMPLOYEES OF DEFENSE CONTRACTORS.

(a) INTERSTATE JOB BANK PROGRAM.—The Secretary of Defense shall establish a program to expand the services of and provide access to the Interstate Job Bank program in the United States Employment Service to individuals eligible for training, adjustment assistance, and employment services under sections 325 and 325A of the Job Training Partnership Act and, in the case of members of the Armed Forces so eligible, the spouses of such members. The Secretary may establish such program in coordination with the Defense Outplacement Referral System and other automated job opening networks.

(b) SERVICES INCLUDED.—The program established under subsection (a) may include the following services:

(1) A phone bank reachable by a toll-free number, staffed by an international "help desk" of individuals familiar with the services provided under section 1144 of title 10, United States Code, and related transition programs under chapter 58 of such title (in the case of members of the Armed Forces, priority shall be given to recently-discharged veterans, members of the Armed Forces who have been separated from active duty, and their spouses).

(2) Interstate Job Bank satellite offices or systems at defense contractor plants by State employment security agencies and at all military bases for direct access and self service to job listings.

(3) Specialized job banks to integrate with the Interstate Job Bank for specialized listings or services such as the Defense Outplacement Referral System (DORS) of resumes, National Academy of Sciences Network, commercial systems, and the outplacement of defense-related personnel in high-tech occupations through the expansion and coordination of existing networks to ensure that resources are available at all service locations.

(4) A system by which individuals and public and private organizations may access the Interstate Job Bank using individual modems or related automated employment systems.

(c) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 for Defense Agencies, $4,000,000 shall be available to carry out the program established under subsection (a).

* * * * * * *

SEC. 4471. [10 U.S.C. 2501 note] NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS.

(a) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

(1) shall identify each contract (if any) under major defense programs of the Department of Defense that will be terminated or substantially reduced as a result of the funding levels provided in that Act; and

(2) shall ensure that notice of the termination of, or substantial reduction in, the funding of the contract is provided—

(A) directly to the prime contractor under the contract; and

(B) directly to the Secretary of Labor.

(b) NOTICE TO SUBCONTRACTORS.—Not later than 60 days after the date on which the prime contractor for a contract under a major defense program receives notice under subsection (a), the prime contractor shall—

(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor under that prime contract for subcontracts in an amount not less than $500,000; and

(2) require that each such subcontractor—

(A) provide such notice to each of its subcontractors for subcontracts in an amount in excess of $100,000; and

(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

(c) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a), the contractor shall provide notice of such termination or substantial reduction to—

(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

(B) if there is no such representative at that time, each such employee; and

(2) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998, and the chief elected official of the unit of general local government within which the adverse effect may occur.

(d) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a defense contract provided under subsection (c)(1) to an employee of a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible to participate in employment and training activities carried out under title I of the Workforce Investment Act of 1998, except in a case in which the employer has specified that the termination of, or substantial reduction in, the contract is not likely to result in plant closure or mass layoff.

(e) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal or cancellation of the termination of, or substantial reduction in, contract funding shall not be eligible, on the basis of any related reduction in funding under the contract, for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act or to participate in employment and training activities under title I of the Workforce

Investment Act of 1998, beginning on the date on which the employee receives the notice.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "major defense program" means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

(2) The terms "substantial reduction" and "substantially reduced", with respect to a defense contract under a major defense program, mean a reduction of 25 percent or more in the total dollar value of the funds obligated by the contract.

* * * * * * *

Subtitle G—Service Members Occupational Conversion and Training

SEC. 4481. [10 U.S.C. 1143 note] SHORT TITLE.

This subtitle may be cited as the "Service Members Occupational Conversion and Training Act of 1992".

SEC. 4482. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] ESTABLISHMENT OF PROGRAM.

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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 per-

manent 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 par-

ticipate 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. [10 U.S.C. 1143 note] 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 en-

tire 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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, 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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. [10 U.S.C. 1143 note] 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 develop-

ment 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. [10 U.S.C. 1143 note] 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, $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. [10 U.S.C. 1143 note] 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.

[Omitted Amendment]

d. Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990

(Division D of the National Defense Authorization Act for Fiscal Year 1991; Public Law 101–510, approved Nov. 5, 1990)

DIVISION D—ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

SEC. 4001. [10 U.S.C. 2391 note] SHORT TITLE

This division may be cited as the "Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990".

SEC. 4002. [10 U.S.C. 2391 note] FINDINGS AND POLICY

(a) FINDINGS.—Congress makes the following findings:

(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small businesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

SEC. 4003. [10 U.S.C. 2391 note] DEFINITIONS

For purposes of this division:

(1) The term "major defense contract or subcontract" means—

(A) any defense contract in an amount not less than $5,000,000 (without regard to the date on which the contract was awarded); and

(B) any subcontract which—

(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

(ii) involves not less than $500,000.

(2) The term "Economic Adjustment Committee" or "Committee" means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

(3) The term "defense facility" means any private or government facility producing goods or services pursuant to a defense contract.

(4) The term "military installation" means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

(5) The term "substantially and seriously affected" means—

(A) when such term is used in conjunction with the term "community", a community—

(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

(III) one percent of the total number of civilian jobs in that area; and

(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

(B) when such term is used in conjunction with the term "businesses" any business which—

(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

(ii) experiences a reduction, or the threat of a reduction, of—

(I) 25 percent or more in sales or production; or

(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

(C) when such term is used in conjunction with the term "group of workers", any group of 100 or more workers at a defense facility who are (or who are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act (as added by section 4202 of this division), as in effect on the day before the date of enactment of the Workforce Investment Act of 1998.

SEC. 4004. [10 U.S.C. 2391 note] CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Com-

mittee may not be significantly altered unless specifically authorized by a law.

(b) CHAIRMAN.—Until October 1, 1997, the Secretary of Defense shall be the chairman of the Committee. After that, the chairmanship shall rotate annually among the Secretary of Defense, Secretary of Labor, and the Secretary of Commerce.

(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Committee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs;

(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts; and

(3) submit to the President and Congress, not later than December 1, 1991, and each December 1 thereafter, a report that—

(A) describes Federal economic adjustment programs available to communities, businesses, and groups of workers;

(B) describes the implementation of defense economic adjustment assistance during the preceding fiscal year; and

(C) specifies the number of communities, businesses, and workers affected by defense budget reductions during the preceding fiscal year and such number assisted by Federal economic adjustment programs during that fiscal year.

TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

SEC. 4101. NOTIFICATION

[Repealed by section 825 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201)]

SEC. 4102. [10 U.S.C. 2391 note] ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

(b) [Omitted—Amendment]

SEC. 4103. [10 U.S.C. 2391 note] COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965, subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 $50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

SEC. 4201. SECRETARY OF DEFENSE NOTICE REQUIREMENT

[Repealed by section 825 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201)]

SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

[Omitted—Added section 325 to the Job Training Partnership Act (29 U.S.C. 1662d)]

SEC. 4203. [10 U.S.C. 2391 note] AUTHORIZATION OF APPROPRIATIONS

(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense $150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for the administration of the activities authorized by the amendment made by section 4202.

TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

SEC. 4301. [10 U.S.C. 2391 note] EXPANSION OF SMALL BUSINESS LOAN PROGRAM

Not later than 180 days after the date of the enactment of this Act, the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 may be used to respond to the consequences of defense budget reductions.

SEC. 4302. [10 U.S.C. 2391 note] ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Pub-

lic Works and Economic Development Act of 1965, and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

SEC. 4303. [10 U.S.C. 2391 note] EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

(a) EXPORT-IMPORT BANK.—

(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

(A) was substantially and seriously affected by defense budget reductions; and

(B) is in transition from defense to nondefense production.

(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act, title VIII of the Omnibus Trade and Competitiveness Act of 1988, or any program referred

to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

(1) has been substantially and seriously affected by defense budget reductions; and

(2) is in transition from defense to nondefense production.

(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

(2) coordinating and integrating export support and financing activities with other Federal agencies.

SEC. 4304. [10 U.S.C. 2391 note] BENEFIT INFORMATION FOR BUSINESSES

(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.

2. NATIONAL SCIENCE CENTER FOR COMMUNICATIONS AND ELECTRONICS

Section 1459 of the Department of Defense Authorization Act, 1986

(Public Law 99–145, approved Nov. 8, 1985)

SEC. 1459. NATIONAL SCIENCE CENTER FOR COMMUNICATIONS AND ELECTRONICS.

(a) FINDINGS.—The Congress makes the following findings:

(1) Scientific and technological developments in communications and electronics are of particular importance to the United States in meeting its national security, industrial, and other needs.

(2) Enhanced training in the technical communications, electronics, and computer disciplines is necessary for a more efficient and effective military force.

(3) The Secretary of the Army, through the Training and Doctrine Command, is responsible for providing training to members of the Army.

(4) The Ninety-seventh Congress, in Senate Concurrent Resolution 130 of that Congress, encouraged the establishment within the United States of a national center dedicated to communications and electronics.

(5) The Secretary of the Army entered into a Memorandum of Understanding with the National Science Center for Communications and Electronics Foundation Incorporated, a nonprofit corporation of the State of Georgia, in which the Army and such foundation agreed to develop a science center for—

(A) the promotion of engineering principles and practices;

(B) the advancement of scientific education for careers in communications and electronics; and

(C) the portrayal of the communications, electronics, and computer arts.

(b) PURPOSE.—It is the purpose of this section—

(1) to recognize the relationship between the Army and the National Science Center for Communications and Electronics Foundation Incorporated (hereinafter in this section referred to as the "Foundation") for the development, construction, and operation of a national science center; and

(2) to authorize the Secretary of the Army (hereinafter in this section referred to as the "Secretary") to provide for the management, operation, and maintenance of those areas in the national science center that are designated for use by the

Army and to provide incidental support for the operation of those areas in the center that are designated for general use.

(c) NATIONAL SCIENCE CENTER.—(1) The Secretary may manage, operate, and maintain facilities at the center under terms and conditions prescribed by the Secretary for the purpose of conducting educational outreach programs in accordance with chapter 111 of title 10, United States Code.

(2) The Foundation, or NSC Discovery Center, Incorporated, a nonprofit corporation of the State of Georgia, shall submit to the Secretary for review and approval all matters pertaining to the acquisition, design, renovation, equipping, and furnishing of the center, including all plans, specifications, contracts, sites, and materials for the center.

(d) GIFTS AND FUNDRAISING.—(1) Subject to paragraph (3), the Secretary may accept a conditional or unconditional donation of money or property that is made for the benefit of, or in connection with, the center.

(2) Notwithstanding any other provision of law, the Secretary may endorse, promote, and assist the efforts of the Foundation and NSC Discovery Center, Incorporated, to obtain—

(A) funds for the management, operation, and maintenance of the center; and

(B) donations of exhibits, equipment, and other property for use in the center.

(3) The Secretary may not accept a donation under this subsection that is made subject to—

(A) any condition that is inconsistent with an applicable law or regulation; or

(B) except to the extent provided in appropriations Acts, any condition that would necessitate an expenditure of appropriated funds.

(4) The Secretary shall prescribe in regulations the criteria to be used in determining whether to accept a donation. The Secretary shall include criteria to ensure that acceptance of a donation does not establish an unfavorable appearance regarding the fairness and objectivity with which the Secretary or any other officer or employee of the Department of Defense performs official responsibilities and does not compromise or appear to compromise the integrity of a Government program or any official involved in that program.

(e) ADVISORY BOARD.—The Secretary may appoint an advisory board to advise the Secretary regarding the operation of the center in pursuit of the goals of the center described in subsection (a)(5). The Secretary may appoint to the advisory board such members of the Board of Directors of the Foundation as the Secretary considers appropriate. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board appointed under this subsection.

(f) OTHER AUTHORIZED USES.—(1) The Secretary may make areas designated for use by the Army in the center available to the public and to other departments and agencies of the Government for research and study and for public exhibitions. The Secretary may charge for such uses as he considers necessary and appropriate.

(2) Any money collected for the use of the facilities of the center shall be deposited to a special fund maintained by the Secretary for the maintenance and operation of the center. The Secretary shall require the Auditor General of the Army to audit the records of such fund at least once every two years and to report the results of the audits to the Secretary.

(g) ALTERNATIVE OR ADDITIONAL DEVELOPMENT AND MANAGEMENT OF THE CENTER.—(1) The Secretary may enter into an agreement with NSC Discovery Center, Incorporated, to develop, manage, and maintain a national science center under this section. In entering into an agreement with NSC Discovery Center, Incorporated, the Secretary may agree to any term or condition to which the Secretary is authorized under this section to agree for purposes of entering into an agreement with the Foundation.

(2) The Secretary may exercise the authority under paragraph (1) in addition to, or instead of, exercising the authority provided under this section to enter into an agreement with the Foundation.

3. SCIENCE AND TECHNOLOGY POLICY INSTITUTE

Section 822 of the National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

SEC. 822. [42 U.S.C. 6686] SCIENCE AND TECHNOLOGY POLICY INSTITUTE

(a) ESTABLISHMENT.—There shall be established a federally funded research and development center to be known as the "Science and Technology Policy Institute" (hereinafter in this section referred to as the "Institute").

(b) INCORPORATION.—The Institute shall be—

(1) administered as a separate entity by an organization currently managing another federally funded research and development center; or

(2) incorporated as a nonprofit membership corporation.

(c) DUTIES.—The duties of the Institute shall include the following:

(1) The assembly of timely and authoritative information regarding significant developments and trends in science and technology research and development in the United States and abroad, including information relating to the technologies identified in the most recent biennial report 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)) and developing and maintaining relevant informational and analytical tools.

(2) Analysis and interpretation of the information referred to in paragraph (1) with particular attention to the scope and content of the Federal science and technology research and development portfolio as it affects interagency and national issues.

(3) Initiation of studies and analysis of alternatives available for ensuring the long-term strength of the United States in the development and application of science and technology, including appropriate roles for the Federal Government, State governments, private industry, and institutions of higher education in the development and application of science and technology.

(4) Provision, upon the request of the Director of the Office of Science and Technology Policy, of technical support and assistance—

(A) to the committees and panels of the President's Council of Advisers on Science and Technology that pro-

vide advice to the Executive branch on science and technology policy; and

(B) to the interagency committees and panels of the Federal Government concerned with science and technology.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties referred to in subsection (c), personnel of the Institute shall—

(1) consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions; and

(2) to the maximum extent practicable, incorporate information and perspectives derived from such consultations in carrying out such duties.

(e) ANNUAL REPORTS.—The Institute [1] shall submit to the President an annual report on the activities of the Institute [1] under this section. Each report shall be in accordance with requirements prescribed by the President.

(f) SPONSORSHIP.—(1) The Director of the National Science Foundation shall be the sponsor of the Institute.

(2) The Director of the National Science Foundation, in consultation with the Director of Office of Science and Technology Policy [2], shall enter into a sponsoring agreement with respect to the Institute. The sponsoring agreement shall require that the Institute carry out such functions as the Director of Office of Science and Technology Policy [2] may specify consistent with the duties referred to in subsection (c). The sponsoring agreement shall be consistent with the general requirements prescribed for such a sponsoring agreement by the Administrator for Federal Procurement Policy.

---

[1] Section 208(a)(6) of the National Science Foundation Authorization Act of 1998 (P.L. 105–207; 110 Stat. 878) amended subsection (e) by striking "Committee" each time it appears and inserting "Institute". The amendment, executed according to the probable intent of Congress, probably should have been to strike "committee" each place such term appears and to insert "Institute".

[2] Section 208(a)(8) of the National Science Foundation Authorization Act of 1998 (P.L. 105–207; 110 Stat. 878) amended subsection (f) by striking "Chairman of Committee" each place it appears and inserting "Director of Office of Science and Technology Policy". The amendment, executed according to the probable intent of Congress, probably should have been to strike "chairman of the committee" and inserting "Director of Office of Science and Technology Policy".

4. MENTOR-PROTEGE PILOT PROGRAM

Section 831 of the National Defense Authorization Act for Fiscal Year 1991

(Public Law 101–510, approved Nov. 5, 1990)

SEC. 831. [10 U.S.C. 2302 note] MENTOR-PROTEGE PILOT PROGRAM [1]

(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the "Mentor-Protege Program".

(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts in order to increase the participation of such business concerns as subcontrac-

[1] This section was amended by section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 706). Paragraphs (2) and (3) of subsection (d) of such section 811 provided as follows:

(2)(A) The Secretary of Defense shall conduct a review of the Mentor-Protege Program established in section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) to assess the feasibility of transitioning such program to operation without a specific appropriation or authority to provide reimbursement to a mentor firm as provided in subsection (g) of such section (as amended by subsection (b)).

(B) In conducting the review under subparagraph (A), the Secretary shall assess possible additional incentives that may be extended to mentor firms to ensure adequate support and participation in the Mentor-Protege Program, including increasing the level of credit in lieu of subcontract awards presently extended to mentor firms for purposes of determining whether mentor firms attain subcontracting participation goals applicable under Department of Defense contracts.

(C) Not later than September 30, 2000, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

(i) a report on the results of the review conducted under this paragraph; and

(ii) any recommendations of the Secretary for legislative action.

(3)(A) The Comptroller General shall conduct a study on the implementation of the Mentor-Protege Program established in section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) and the extent to which the program is achieving the purposes established in that section in a cost-effective manner.

(B) The study shall include the following:

(i) A review of the manner in which funds for the Mentor-Protege Program have been obligated.

(ii) An identification and assessment of the average amount spent by the Department of Defense on individual mentor-protege agreements, and the correlation between levels of funding and business development of protege firms.

(iii) An evaluation of the effectiveness of the incentives provided to mentor firms to participate in the Mentor-Protege Program and whether reimbursements remain a cost-effective and viable incentive.

(iv) An assessment of the success of the Mentor-Protege Program in enhancing the business competitiveness and financial independence of protege firms.

(v) A review of the relationship between the results of the Mentor-Protegee Program and the objectives established in section 2323 of title 10, United States Code.

(C) Not later than January 1, 2002, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the study.

tors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a "mentor firm".

(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement to receive such assistance at any time. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a "protege firm".

(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

(d) MENTOR FIRM ELIGIBILITY.—Subject to subsection (c)(1), a mentor firm eligible for award of Federal contracts may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if—

(1) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

(2) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

(1) A developmental program for the protege firm, in such detail as may be reasonable, including (A) factors to assess the protege firm's developmental progress under the program, and

(B) the anticipated number and type of subcontracts to be awarded the protege firm.

(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

(1) Assistance, by using mentor firm personnel, in—

(A) general business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

(B) engineering and technical matters such as production, inventory control, and quality assurance; and

(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

(4) Advance payments under such subcontracts.

(5) Loans.

(6) Cash in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

(C) a historically Black college or university or a minority institution of higher education.

(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (7) of subsection (f) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to

the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement under subsection (l)(2) shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(7);

(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

(iii) two times the total amount of any other such costs.

(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

(j) EXPIRATION OF AUTHORITY.—(1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2002.

(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2005.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)). The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

(l) REPORTS AND REVIEWS.—(1) The mentor firm and protege firm under a mentor-protege agreement shall submit to the Secretary of Defense an annual report on the progress made by the protege firm in employment, revenues, and participation in Department of Defense contracts during the fiscal year covered by the report. The requirement for submission of an annual report applies with respect to each fiscal year covered by the program participation term under the agreement and each of the two fiscal years fol-

lowing the expiration of the program participation term. The Secretary shall prescribe the timing and form of the annual report.

(2)(A) The Secretary shall conduct an annual performance review of each mentor-protege agreement that provides for reimbursement of costs. The Secretary shall determine on the basis of the review whether—

(i) all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protege firm in accordance with the requirements of this section and applicable regulations; and

(ii) the mentor firm and protege firm accurately reported progress made by the protege firm in employment, revenues, and participation in Department of Defense contracts during the program participation term covered by the mentor-protege agreement and the two fiscal years following the expiration of the program participation term.

(B) The Secretary shall act through the Commander of the Defense Contract Management Command in carrying out the reviews and making the determinations under subparagraph (A).

(3) Not later than 6 months after the end of each of fiscal years 2000 through 2004, the Secretary of Defense shall submit to Congress an annual report on the Mentor-Protege Program for that fiscal year.

(4) The annual report for a fiscal year shall include, at a minimum, the following:

(A) The number of mentor-protege agreements that were entered into during the fiscal year.

(B) The number of mentor-protege agreements that were in effect during the fiscal year.

(C) The total amount reimbursed to mentor firms pursuant to subsection (g) during the fiscal year.

(D) Each mentor-protege agreement, if any, that was approved during the fiscal year in accordance with subsection (e)(2) to provide a program participation term in excess of 3 years, together with the justification for the approval.

(E) Each reimbursement of a mentor firm in excess of the limitation in subsection (g)(2)(C) that was made during the fiscal year pursuant to an approval granted in accordance with that subsection, together with the justification for the approval.

(F) Trends in the progress made in employment, revenues, and participation in Department of Defense contracts by the protege firms participating in the program during the fiscal year and the protege firms that completed or otherwise terminated participation in the program during the preceding two fiscal years.

(m) DEFINITIONS.—In this section:

(1) The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(2) The term "disadvantaged small business concern" means:

(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

(D) a qualified organization employing the severely disabled; or

(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

(3) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

(4) The term "historically Black college and university" means any of the historically Black colleges and universities referred to in section section 2323 of title 10, United States Code.

(5) The term "minority institution of higher education" means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

(6) The term "subcontracting participation goal", with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(7) The term "qualified organization employing the severely disabled" means a business entity operated on a for-profit or nonprofit basis that—

(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

(8) The term "severely disabled individual" means an individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for the Purchase From the Blind and Other Severely Handicapped established by the first section of the Act of June 25, 1938 (41

U.S.C. 46; popularly known as the "Wagner-O'Day Act"), is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.

5. AUTHORITY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Section 845 of the National Defense Authorization Act for Fiscal Year 1994

(Public Law 103–160, approved Nov. 30, 1993)

SEC. 845. [10 U.S.C. 2371 note] 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 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.

6. DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Section 257 of the National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337; approved Oct. 5, 1994)

SEC. 257. [10 U.S.C. 2358 note] 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 Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

(b) PROGRAM OBJECTIVES.—The objectives of the program are as follows:

(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

(c) PROGRAM ACTIVITIES.—In order to achieve the program objectives, the following activities are authorized under the program:

(1) Competitive award of 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.

7. POLICY REGARDING PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR FOR THE DEPARTMENT OF DEFENSE

Section 311 of the National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106; approved Feb, 10, 1996)

SEC. 311. [10 U.S.C. 2464 note] POLICY REGARDING PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR FOR THE DEPARTMENT OF DEFENSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The Department of Defense does not have a comprehensive policy regarding the performance of depot-level maintenance and repair of military equipment.

(2) The absence of such a policy has caused the Congress to establish guidelines for the performance of such functions.

(3) It is essential to the national security of the United States that the Department of Defense maintain an organic capability within the department, including skilled personnel, technical competencies, equipment, and facilities, to perform depot-level maintenance and repair of military equipment in order to ensure that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment.

(4) The organic capability of the Department of Defense to perform depot-level maintenance and repair of military equipment must satisfy known and anticipated core maintenance and repair requirements across the full range of peacetime and wartime scenarios.

(5) Although it is possible that savings can be achieved by contracting with private-sector sources for the performance of some work currently performed by Department of Defense depots, the Department of Defense has not determined the type or amount of work that should be performed under contract with private-sector sources nor the relative costs and benefits of contracting for the performance of such work by those sources.

(b) SENSE OF CONGRESS.—It is the sense of Congress that there is a compelling need for the Department of Defense to articulate known and anticipated core maintenance and repair requirements, to organize the resources of the Department of Defense to meet those requirements economically and efficiently, and to determine what work should be performed by the private sector and how such work should be managed.

(c) REQUIREMENT FOR POLICY.—Not later than March 31, 1996, the Secretary of Defense shall develop and report to the Committee

on Armed Services of the Senate and the Committee on National Security of the House of Representatives a comprehensive policy on the performance of depot-level maintenance and repair for the Department of Defense that maintains the capability described in section 2464 of title 10, United States Code.

(d) CONTENT OF POLICY.—In developing the policy, the Secretary of Defense shall do each of the following:

(1) Identify for each military department, with the concurrence of the Secretary of that military department, those depot-level maintenance and repair activities that are necessary to ensure the depot-level maintenance and repair capability as required by section 2464 of title 10, United States Code.

(2) Provide for performance of core depot-level maintenance and repair capabilities in facilities owned and operated by the United States.

(3) Provide for the core capabilities to include sufficient skilled personnel, equipment, and facilities that—

(A) is of the proper size (i) to ensure a ready and controlled source of technical competence and repair and maintenance capability necessary to meet the requirements of the National Military Strategy and other requirements for responding to mobilizations and military contingencies, and (ii) to provide for rapid augmentation in time of emergency; and

(B) is assigned sufficient workload to ensure cost efficiency and technical proficiency in time of peace.

(4) Address environmental liability.

(5) In the case of depot-level maintenance and repair workloads in excess of the workload required to be performed by Department of Defense depots, provide for competition for those workloads between public and private entities when there is sufficient potential for realizing cost savings based on adequate private-sector competition and technical capabilities.

(6) Address issues concerning exchange of technical data between the Federal Government and the private sector.

(7) Provide for, in the Secretary's discretion and after consultation with the Secretaries of the military departments, the transfer from one military department to another, in accordance with merit-based selection processes, workload that supports the core depot-level maintenance and repair capabilities in facilities owned and operated by the United States.

(8) Require that, in any competition for a workload (whether among private-sector sources or between depot-level activities of the Department of Defense and private-sector sources), bids are evaluated under a methodology that ensures that appropriate costs to the Government and the private sector are identified.

(9) Provide for the performance of maintenance and repair for any new weapons systems defined as core, under section 2464 of title 10, United States Code, in facilities owned and operated by the United States.

(e) CONSIDERATIONS.—In developing the policy, the Secretary shall take into consideration the following matters:

(1) The national security interests of the United States.

(2) The capabilities of the public depots and the capabilities of businesses in the private sector to perform the maintenance and repair work required by the Department of Defense.

(3) Any applicable recommendations of the Defense Base Closure and Realignment Commission that are required to be implemented under the Defense Base Closure and Realignment Act of 1990.

(4) The extent to which the readiness of the Armed Forces would be affected by a necessity to construct new facilities to accommodate any redistribution of depot-level maintenance and repair workloads that is made in accordance with the recommendation of the Defense Base Closure and Realignment Commission, under the Defense Base Closure and Realignment Act of 1990, that such workloads be consolidated at Department of Defense depots or private-sector facilities.

(5) Analyses of costs and benefits of alternatives, including a comparative analysis of—

(A) the costs and benefits, including any readiness implications, of any proposed policy to convert to contractor performance of depot-level maintenance and repair workloads where the workload is being performed by Department of Defense personnel; and

(B) the costs and benefits, including any readiness implications, of a policy to transfer depot-level maintenance and repair workloads among depots.

(f) REPEAL OF 60/40 REQUIREMENT AND REQUIREMENT RELATING TO COMPETITION.—(1) Sections 2466 and 2469 of title 10, United States Code, are repealed.

(2) The table of sections at the beginning of chapter 146 of such title is amended by striking out the items relating to sections 2466 and 2469.

(3) The amendments made by paragraphs (1) and (2) shall take effect on the date (after the date of the enactment of this Act) on which legislation is enacted that contains a provision that specifically states one of the following:

(A) "The policy on the performance of depot-level maintenance and repair for the Department of Defense that was submitted by the Secretary of Defense to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives pursuant to section 311 of the National Defense Authorization Act for Fiscal Year 1996 is approved."; or

(B) "The policy on the performance of depot-level maintenance and repair for the Department of Defense that was submitted by the Secretary of Defense to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives pursuant to section 311 of the National Defense Authorization Act for Fiscal Year 1996 is approved with the following modifications:" (with the modifications being stated in matter appearing after the colon).

(g) ANNUAL REPORT.—If legislation referred to in subsection (f)(3) is enacted, the Secretary of Defense shall, not later than March 1 of each year (beginning with the year after the year in

which such legislation is enacted), submit to Congress a report that—

(1) specifies depot maintenance core capability requirements determined in accordance with the procedures established to comply with the policy prescribed pursuant to subsections (d)(2) and (d)(3);

(2) specifies the planned amount of workload to be accomplished by the depot-level activities of each military department in support of those requirements for the following fiscal year; and

(3) identifies the planned amount of workload, which—

(A) shall be measured by direct labor hours and by amounts to be expended; and

(B) shall be shown separately for each commodity group.

(h) REVIEW BY GENERAL ACCOUNTING OFFICE.—(1) The Secretary shall make available to the Comptroller General of the United States all information used by the Department of Defense in developing the policy under subsections (c) through (e) of this section.

(2) Not later than 45 days after the date on which the Secretary submits to Congress the report required by subsection (c), the Comptroller General shall transmit to Congress a report containing a detailed analysis of the Secretary's proposed policy as reported under such subsection.

(i) REPORT ON DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOAD.—Not later than March 31, 1996, the Secretary of Defense shall submit to Congress a report on the depot-level maintenance and repair workload of the Department of Defense. The report shall, to the maximum extent practicable, include the following:

(1) An analysis of the need for and effect of the requirement under section 2466 of title 10, United States Code, that no more than 40 percent of the depot-level maintenance and repair work of the Department of Defense be contracted for performance by non-Government personnel, including a description of the effect on military readiness and the national security resulting from that requirement and a description of any specific difficulties experienced by the Department of Defense as a result of that requirement.

(2) An analysis of the distribution during the five fiscal years ending with fiscal year 1995 of the depot-level maintenance and repair workload of the Department of Defense between depot-level activities of the Department of Defense and non-Government personnel, measured by direct labor hours and by amounts expended, and displayed, for that five-year period and for each year of that period, so as to show (for each military department (and separately for the Navy and Marine Corps)) such distribution.

(3) A projection of the distribution during the five fiscal years beginning with fiscal year 1997 of the depot-level maintenance and repair workload of the Department of Defense between depot-level activities of the Department of Defense and non-Government personnel, measured by direct labor hours and by amounts expended, and displayed, for that five-year pe-

riod and for each year of that period, so as to show (for each military department (and separately for the Navy and Marine Corps)) such distribution that would be accomplished under a new policy as required under subsection (c).

(j) OTHER REVIEW BY GENERAL ACCOUNTING OFFICE.—(1) The Comptroller General of the United States shall conduct an independent audit of the findings of the Secretary of Defense in the report under subsection (i). The Secretary of Defense shall provide to the Comptroller General for such purpose all information used by the Secretary in preparing such report.

(2) Not later than 45 days after the date on which the Secretary of Defense submits to Congress the report required under subsection (i), the Comptroller General shall transmit to Congress a report containing a detailed analysis of the report submitted under that subsection.

8. DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM

Section 2892 of the National Defense Authorization Act for Fiscal Year 1996

(Public Law 104–106; approved Feb. 10, 1996)

SEC. 2892. DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program (to be known as the "Department of Defense Laboratory Revitalization Demonstration Program") for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve Department of Defense laboratories covered by the program.

(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be $3,000,000;

(2) the amount provided in subsection (b)(1) of such section shall be deemed to be $1,500,000; and

(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be $1,000,000.

(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall establish procedures for the review and approval of requests from Department of Defense laboratories for construction under the program.

(2) The laboratories at which construction may be carried out under the program may not include Department of Defense laboratories that are contractor-owned.

(d) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the program. The report shall include the Secretary's conclusions and recommendation regarding the desirability of making the authority set forth under subsection (b) permanent.

(e) EXCLUSIVITY OF PROGRAM.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department of Defense laboratory covered by the program.

(f) DEFINITIONS.—In this section:

(1) The term "laboratory" includes—

(A) a research, engineering, and development center;

(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

(C) a supporting facility of a laboratory.

(2) The term "supporting facility", with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

(g) EXPIRATION OF AUTHORITY.—The Secretary may not commence a construction project under the program after September 30, 2003.

9. PILOT PROGRAMS FOR CONVERTED DEFENSE EMPLOYEES

Section 1616 of the National Defense Authorization Act for Fiscal Year 1997

(Public Law 104–201, approved Sept. 23, 1996)

SEC. 1616. [5 U.S.C. 8331 note] PILOT PROGRAMS FOR DEFENSE EMPLOYEES CONVERTED TO CONTRACTOR EMPLOYEES DUE TO PRIVATIZATION AT CLOSED MILITARY INSTALLATIONS.

(a) PILOT PROGRAMS AUTHORIZED.—(1) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management, may establish one or more pilot programs under which Federal retirement benefits are provided in accordance with this section to persons who convert from Federal employment to employment by a Department of Defense contractor in connection with the privatization of the performance of functions at selected military installations being closed under the base closure and realignment process.

(2) The Secretary of Defense shall select the military installations to be covered by a pilot program under this section.

(b) ELIGIBLE CONVERTED EMPLOYEES.—(1) A person is a converted employee eligible for Federal retirement benefits under this section if the person is a former employee of the Department of Defense (other than a temporary employee) who—

(A) while employed by the Department of Defense at a military installation selected to participate in a pilot program, performed a function that was recommended, in a report of the Defense Base Closure and Realignment Commission submitted to the President under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), to be privatized for performance by a defense contractor at the same installation or in the vicinity of the installation;

(B) while so employed, separated from Federal service after being notified that the employee would be separated in a reduction in force resulting from such privatization;

(C) at the time separated from Federal service, was covered under the Civil Service Retirement System, but was not eligible for an immediate annuity under the Civil Service Retirement System;

(D) does not withdraw retirement contributions under section 8342 of title 5, United States Code;

(E) within 60 days following such separation, is employed by the defense contractor selected to privatize the function to

perform substantially the same function performed by the person before the separation; and

(F) remains employed by the defense contractor (or a successor defense contractor) or subcontractor of the defense contractor (or successor defense contractor) until attaining early deferred retirement age (unless the employment is sooner involuntarily terminated for reasons other than performance or conduct of the employee).

(2) A person who, under paragraph (1), would otherwise be eligible for an early deferred annuity under this section shall not be eligible for such benefits if the person received separation pay or severance pay due to a separation described in subparagraph (B) of that paragraph unless the person repays the full amount of such pay with interest (computed at a rate determined appropriate by the Director of the Office of Personnel Management) to the Department of Defense before attaining early deferred retirement age.

(c) RETIREMENT BENEFITS OF CONVERTED EMPLOYEES.—In the case of a converted employee covered by a pilot program, payment of a deferred annuity for which the converted employee is eligible under section 8338(a) of title 5, United States Code, shall commence on the first day of the first month that begins after the date on which the converted employee attains early deferred retirement age, notwithstanding the age requirement under that section. If the employment of a converted employee is involuntarily terminated by the defense contractor or subcontractor as described in subsection (b)(1)(F) and the converted employee resumes Federal service before the converted employee attains early deferred retirement age, the converted employee shall once again be covered under the Civil Service Retirement System instead of the pilot program.

(d) COMPUTATION OF AVERAGE PAY.—(1)(A) This paragraph applies to a converted employee who was employed in a position classified under the General Schedule immediately before the employee's covered separation from Federal service.

(B) Subject to subparagraph (C), for purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that rates of basic pay are increased under section 5303 of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

(C) The average pay of a converted employee, as adjusted under subparagraph (B), may not exceed the amount to which an annuity of the converted employee could be increased under section 8340 of title 5, United States Code, in accordance with the limitation in subsection (g)(1) of such section (relating to maximum pay, final pay, or average pay).

(2)(A) This paragraph applies to a converted employee who was a prevailing rate employee (as defined under section 5342(2) of title 5, United States Code) immediately before the employee's covered separation from Federal service.

(B) For purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay

of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that pay rates for positions that are in the same area as, and are comparable to, the last position the converted employee held as a prevailing rate employee, are increased under section 5343(a) of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

(e) PAYMENT OF UNFUNDED LIABILITY.—(1) The military department concerned shall be liable for that portion of any estimated increase in the unfunded liability of the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, which is attributable to any benefits payable from such Fund to a converted employee, and any survivor of a converted employee, when the increase results from—

(A) an increase in the average pay of the converted employee under subsection (d) upon which such benefits are computed; and

(B) the commencement of an early deferred annuity in accordance with this section before the attainment of 62 years of age by the converted employee.

(2) The estimated increase in the unfunded liability for each department referred to in paragraph (1) shall be determined by the Director of the Office of Personnel Management. In making the determination, the Director shall consider any savings to the Fund as a result of a pilot program established under this section. The Secretary of the military department concerned shall pay the amount so determined to the Director in 10 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in average pay under subsection (d) becomes effective.

(f) CONTRACTOR SERVICE NOT CREDITABLE.—Service performed by a converted employee for a defense contractor after the employee's covered separation from Federal service is not creditable service for purposes of subchapter III of chapter 83 of title 5, United States Code.

(g) RECEIPT OF BENEFITS WHILE EMPLOYED BY A DEFENSE CONTRACTOR.—A converted employee may commence receipt of an early deferred annuity in accordance with this section while continuing to work for a defense contractor.

(h) LUMP-SUM CREDIT PAYMENT.—If a converted employee dies before attaining early deferred retirement age, such employee shall be treated as a former employee who dies not retired for purposes of payment of the lump-sum credit under section 8342(d) of title 5, United States Code.

(i) CONTINUED FEDERAL HEALTH BENEFITS COVERAGE.—Notwithstanding section 8905a(e)(1)(A) of title 5, United States Code, the continued coverage of a converted employee for health benefits under chapter 89 of such title by reason of the application of section 8905a of such title to such employee shall terminate 90 days after the date of the employee's covered separation from Federal employment. For the purposes of the preceding sentence,

a person who, except for subsection (b)(2), would be a converted employee shall be considered a converted employee.

(j) REPORT BY GENERAL ACCOUNTING OFFICE.—The Comptroller General shall conduct a study of each pilot program, if any, established under this section and submit a report on the pilot program to Congress not later than two years after the date on which the program is established. The report shall contain the following:

(1) A review and evaluation of the program, including—

(A) an evaluation of the success of the privatization outcomes of the program;

(B) a comparison and evaluation of such privatization outcomes with the privatization outcomes with respect to facilities at other military installations closed or realigned under the base closure laws;

(C) an evaluation of the impact of the program on the Federal workforce and whether the program results in the maintenance of a skilled workforce for defense contractors at an acceptable cost to the military department concerned; and

(D) an assessment of the extent to which the program is a cost-effective means of facilitating privatization of the performance of Federal activities.

(2) Recommendations relating to the expansion of the program to other installations and employees.

(3) Any other recommendation relating to the program.

(k) IMPLEMENTING REGULATIONS.—Not later than 30 days after the Secretary of Defense notifies the Director of the Office of Personnel Management of a decision to establish a pilot program under this section, the Director shall prescribe regulations to carry out the provisions of this section with respect to that pilot program. Before prescribing the regulations, the Director shall consult with the Secretary.

(l) DEFINITIONS.—In this section:

(1) The term "converted employee" means a person who, pursuant to subsection (b), is eligible for benefits under this section.

(2) The term "covered separation from Federal service" means a separation from Federal service as described under subsection (b)(1)(B).

(3) The term "Civil Service Retirement System" means the retirement system under subchapter III of chapter 83 of title 5, United States Code.

(4) The term "defense contractor" means any entity that—

(A) contracts with the Department of Defense to perform a function previously performed by Department of Defense employees;

(B) performs that function at the same installation at which such function was previously performed by Department of Defense employees or in the vicinity of that installation; and

(C) is the employer of one or more converted employees.

(5) The term "early deferred retirement age" means the first age at which a converted employee would have been eligi-

ble for immediate retirement under subsection (a) or (b) of section 8336 of title 5, United States Code, if such converted employee had remained an employee within the meaning of section 8331(1) of such title continuously until attaining such age.

(6) The term "severance pay" means severance pay payable under section 5595 of title 5, United States Code.

(7) The term "separation pay" means separation pay payable under section 5597 of title 5, United States Code.

(m) APPLICATION OF PILOT PROGRAM.—In the event that a pilot program is established for a military installation, the pilot program shall apply to a covered separation from Federal service by an employee of the Department of Defense at the installation occurring on or after August 1, 1996.

10. PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES

Section 141 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

SEC. 141. [10 U.S.C. 4543 note] PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES.

(a) PILOT PROGRAM REQUIRED.—During fiscal years 1998 through 2001, the Secretary of the Army shall carry out a pilot program to test the efficacy and appropriateness of selling manufactured articles and services of Army industrial facilities under section 4543 of title 10, United States Code, without regard to the availability of the articles and services from United States commercial sources. In carrying out the pilot program, the Secretary may use articles manufactured at, and services provided by, not more than three Army industrial facilities.

(b) TEMPORARY WAIVER OF REQUIREMENT FOR DETERMINATION OF UNAVAILABILITY FROM DOMESTIC SOURCE.—Under the pilot program, the Secretary of the Army is not required under section 4543(a)(5) of title 10, United States Code, to determine whether an article or service is available from a commercial source located in the United States in the case of any of the following sales for which a solicitation of offers is issued during the period during which the pilot program is being conducted:

(1) A sale of articles to be incorporated into a weapon system being procured by the Department of Defense.

(2) A sale of services to be used in the manufacture of a weapon system being procured by the Department of Defense.

(c) REVIEW BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall review the experience under the pilot program under this section and, not later than July 1, 1999, submit to Congress a report on the results of the review. The report shall contain the following:

(1) The Inspector General's views regarding the extent to which the waiver under subsection (b) enhances the opportunity for United States manufacturers, assemblers, developers, and other concerns to enter into or participate in contracts and teaming arrangements with Army industrial facilities under weapon system programs of the Department of Defense.

(2) The Inspector General's views regarding the extent to which the waiver under subsection (b) enhances the opportunity for Army industrial facilities referred to in section 4543(a) of title 10, United States Code, to enter into or participate in contracts and teaming arrangements with United States manufacturers, assemblers, developers, and other concerns under weapon system programs of the Department of Defense.

(3) The Inspector General's views regarding the effect of the waiver under subsection (b) on the ability of small businesses to compete for the sale of manufactured articles or services in the United States in competitions to enter into or participate in contracts and teaming arrangements under weapon system programs of the Department of Defense.

(4) Specific examples under the pilot program that support the Inspector General's views.

(5) Any other information that the Inspector General considers pertinent regarding the effects of the waiver of section 4543(a)(5) of title 10, United States Code, under the pilot program on opportunities for United States manufacturers, assemblers, developers, or other concerns, and for Army industrial facilities, to enter into or participate in contracts and teaming arrangements under weapon system programs of the Department of Defense.

(6) Any recommendations that the Inspector General considers appropriate regarding continuation or modification of the policy set forth in section 4543(a)(5) of title 10, United States Code.

(d) UPDATE OF REPORT.—Not later than March 1, 2001, the Inspector General of the Department of Defense shall submit to Congress an update of the report required to be submitted under subsection (c) and an assessment of the success of the pilot program.

11. DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM

Section 203 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85, approved Nov. 18, 1997)

SEC. 203. [10 U.S.C. 2511 note] DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM.

(a) FUNDING 1998.—Of the amounts authorized to be appropriated by section 201, $75,000,000 is authorized for dual-use projects.

(b) GOALS.—(1) Subject to paragraph (3), it shall be the objective of the Secretary of each military department to obligate for dual-use projects in each fiscal year referred to in paragraph (2), out of the total amount authorized to be appropriated for such fiscal year for the applied research programs of the military department, the percent of such amount that is specified for that fiscal year in paragraph (2).

(2) The objectives for fiscal years under paragraph (1) are as follows:

(A) For fiscal year 1998, 5 percent.
(B) For fiscal year 1999, 7 percent.
(C) For fiscal year 2000, 10 percent.
(D) For fiscal year 2001, 15 percent.

(3) The Secretary of Defense may establish for a military department for a fiscal year an objective different from the objective set forth in paragraph (2) if the Secretary—

(A) determines that compelling national security considerations require the establishment of the different objective; and

(B) notifies Congress of the determination and the reasons for the determination.

(c) DESIGNATION OF OFFICIAL FOR DUAL-USE PROGRAMS.—(1) The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense to carry out responsibilities for dual-use projects under this subsection. The designated official shall report directly to the Under Secretary of Defense for Acquisition 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 the date of the enactment of this Act, the Secretary may consider in-kind contributions by non-Federal participants only to the extent such contributions constitute 50 percent or less of the share of the project costs by such participants.

(e) USE OF COMPETITIVE PROCEDURES.—Funds obligated for a dual-use project may be counted toward meeting an objective under subsection (a) only if the funds are obligated for a contract, grant, cooperative agreement, or other transaction that was entered into through the use of competitive procedures.

(f) REPORT.—(1) Not later than March 1 of each of 1998, 1999, and 2000, the Secretary of Defense shall submit a report to the congressional defense committees on the progress made by the Department of Defense in meeting the objectives set forth in subsection (b) during the preceding fiscal year.

(2) The report for a fiscal year shall contain, at a minimum, the following:

(A) The aggregate value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research programs in the Department of Defense for that fiscal year.

(B) For each military department, the value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research program of the military department for that fiscal year.

(C) A summary of the cost-sharing arrangements in dual-use projects that were initiated during the fiscal year and are counted toward reaching an objective under this section.

(D) A description of the regulations, directives, or other procedures that have been issued by the Secretary of Defense or the Secretary of a military department to increase the percentage of the total value of the dual-use projects undertaken to meet or exceed an objective under this section.

(E) Any recommended legislation to facilitate achievement of objectives under this section.

(g) COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE.—(1) The Secretary of Defense shall establish a Commercial Operations and Support Savings Initiative (in this subsection re-

ferred to as the "Initiative") to develop commercial products and processes that the military departments can incorporate into operational military systems to reduce costs of operations and support.

(2) Of the amounts authorized to be appropriated by section 201, $50,000,000 is authorized for the Initiative.

(3) Projects and participants in the Initiative shall be selected through the use of competitive procedures.

(4) The budget submitted to Congress by the President for fiscal year 1999 and each fiscal year thereafter pursuant to section 1105(a) of title 31, United States Code, shall set forth separately the funding request for the Initiative.

(h) REPEAL OF SUPERSEDED AUTHORITY.—Section 203 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2451) is repealed.

(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.

12. PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE

a. Section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

(Public Law 105–261, approved Oct. 17, 1998)

SEC. 246. [10 U.S.C. 2358 note] PILOT PROGRAM FOR REVITALIZING THE LABORATORIES AND TEST AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE.

(a) PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions.

(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation center, of each military department with authority for the following:

(A) To explore innovative methods for quickly, efficiently, and fairly entering into cooperative relationships with universities and other private sector entities with respect to the performance of research and development functions.

(B) To waive any restrictions on the demonstration and implementation of such methods that are not required by law.

(C) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including to carry out such initiatives as focusing on the performance of core functions and adopting more business-like practices.

(3) In selecting the laboratories and centers for participation in the pilot program, the Secretary shall consider laboratories and centers where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

(4) The Secretary may carry out the pilot program at each selected laboratory and center for a period of three years beginning not later than March 1, 1999.

(b) REPORTS.—(1) Not later than March 1, 1999, the Secretary of Defense shall submit a report on the implementation of the pilot program to Congress. The report shall include the following:

(A) Each laboratory and center selected for the pilot program.

(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory or center.

(C) The criteria to be used for measuring the success of each concept to be tested.

(2) Promptly after the expiration of the period for participation of a laboratory or center in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of the laboratory or center in the pilot program. The report shall contain the following:

(A) A description of the concepts tested.

(B) The results of the testing.

(C) The lessons learned.

(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at the laboratory or center under the pilot program.

(c) COMMENDATION.—Congress commends the Secretary of Defense for the progress made by the science and technology laboratories and test and evaluation centers of the Department of Defense and encourages the Secretary to take the actions necessary to ensure continued progress for the laboratories and test and evaluation centers in developing cooperative relationships with universities and other private sector entities for the performance of research and development functions.

---

b. Section 245 of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, approved Oct. 5, 1999)

SEC. 245. [10 U.S.C. 2358 note] ADDITIONAL PILOT PROGRAM FOR REVITALIZING DEPARTMENT OF DEFENSE LABORATORIES.

(a) AUTHORITY.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense. The pilot program under this section is in addition to, but may be carried out in conjunction with, the pilot program authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; 10 U.S.C. 2358 note).

(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

(A) To ensure that the laboratories selected can attract a workforce appropriately balanced between permanent and temporary personnel and among workers with an appropriate level of skills and experience and that those laboratories can effectively compete in hiring to obtain the finest scientific talent.

(B) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including carrying out initiatives such as focusing on the performance of core functions and adopting more business-like practices.

(C) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A) and (B).

(3) In selecting the laboratories for participation in the pilot program, the Secretary shall consider laboratories where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

(4) The Secretary may carry out the pilot program at each selected laboratory for a period of three years beginning not later than March 1, 2000.

(b) REPORTS.—(1) Not later than March 1, 2000, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program. The report shall include the following:

(A) Each laboratory selected for the pilot program.

(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory.

(C) The criteria to be used for measuring the success of each concept to be tested.

(2) Promptly after the expiration of the period for participation of a laboratory in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

(A) A description of the concepts tested.

(B) The results of the testing.

(C) The lessons learned.

(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

13. NAVY HIGHER EDUCATION PILOT PROGRAM REGARDING ADMINISTRATION OF BUSINESS RELATIONSHIPS BETWEEN GOVERNMENT AND PRIVATE SECTOR

Section 1108 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85; approved Nov. 18, 1997)

SEC. 1108. [10 U.S.C. 5013 note] NAVY HIGHER EDUCATION PILOT PROGRAM REGARDING ADMINISTRATION OF BUSINESS RELATIONSHIPS BETWEEN GOVERNMENT AND PRIVATE SECTOR.

(a) PILOT PROJECT AUTHORIZED.—During fiscal years 1998 through 2002, the Secretary of the Navy may establish and conduct a pilot program of graduate-level higher education regarding the administration of business relationships between the Government and the private sector.

(b) PURPOSE.—The purpose of the pilot program is to make available to employees of the Naval Undersea Warfare Center, employees of the Naval Sea Systems Command, and employees of the Acquisition Center for Excellence of the Navy (upon establishment of such Acquisition Center), a curriculum of graduate-level higher education leading to the award of a graduate degree designed to prepare participants effectively to meet the challenges of administering Government contracting and other business relationships between the United States and private sector businesses in the context of constantly changing or newly emerging industries, technologies, governmental organizations, policies, and procedures (including governmental organizations, policies, and procedures recommended in the National Performance Review).

(c) PARTNERSHIP WITH INSTITUTION OF HIGHER EDUCATION.—(1) The Secretary of the Navy may enter into an agreement with an institution of higher education to assist the Naval Undersea Warfare Center with the development of the curriculum for the pilot program, to offer courses and provide instruction and materials to participants to the extent provided for in the agreement, to provide such other assistance in support of the program as may be provided for in the agreement, and to award a graduate degree under the program.

(2) To be eligible to enter into an agreement under paragraph (1), an institution of higher education must have an established program of graduate-level education that is relevant to the purpose of the pilot program.

(d) CURRICULUM.—The curriculum offered under the pilot program shall—

(1) be designed specifically to achieve the purpose of the pilot program; and

(2) include courses that are—

(A) typically offered under curricula leading to award of the degree of Master of Business Administration by institutions of higher education; and

(B) necessary for meeting educational qualification requirements for certification as an acquisition program manager.

(e) DISTANCE LEARNING OPTION.—The Secretary of the Navy may include as part of the pilot program policies and procedures for offering distance learning instruction by means of telecommunications, correspondence, or other methods for off-site receipt of instruction.

(f) REPORT.—Not later than 90 days after the termination of the pilot program, the Secretary of the Navy shall submit to Congress a report containing—

(1) an assessment by the Secretary of the value of the program for meeting the purpose of the program and the desirability of permanently establishing a similar program for other employees of the Department of Defense; and

(2) such other information and recommendations regarding the program as the Secretary considers appropriate.

(g) LIMITATION ON FUNDING SOURCE.—Any funds required for the pilot program for a fiscal year shall be derived only from the appropriation "Operation and Maintenance, Navy" for that fiscal year.

14. ARSENAL SUPPORT PROGRAM INITIATIVE

Section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398; 114 Stat. 1654A–65; approved Oct. 30, 2000)

SEC. 343. [10 U.S.C. 4551 note] ARSENAL SUPPORT PROGRAM INITIATIVE.

(a) DEMONSTRATION PROGRAM REQUIRED.—To help maintain the viability of the Army manufacturing arsenals and the unique capabilities of these arsenals to support the national security interests of the United States, the Secretary of the Army shall carry out a demonstration program under this section during fiscal years 2001 and 2002 at each manufacturing arsenal of the Department of the Army.

(b) PURPOSES OF DEMONSTRATION PROGRAM.—The purposes of the demonstration program are as follows:

(1) To provide for the utilization of the existing skilled workforce at the Army manufacturing arsenals by commercial firms.

(2) To provide for the reemployment and retraining of skilled workers who, as a result of declining workload and reduced Army spending on arsenal production requirements at these Army arsenals, are idled or underemployed.

(3) To encourage commercial firms, to the maximum extent practicable, to use these Army arsenals for commercial purposes.

(4) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use these Army arsenals for those purposes.

(5) 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.

(6) 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.

(7) To the maximum extent practicable, to allow the operation of these Army arsenals to be rapidly responsive to the forces of free market competition.

(8) To reduce or eliminate the cost of Government ownership of these Army arsenals, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

(9) To reduce the cost of products of the Department of Defense produced at these Army arsenals.

(10) To leverage private investment at these Army arsenals through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the demonstration program 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 of the Army.

(11) 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 these Army arsenals.

(c) CONTRACT AUTHORITY.—(1) In the case of each Army manufacturing arsenal, the Secretary of the Army may enter into contracts with commercial firms to authorize the contractors, consistent with section 4543 of title 10, United States Code—

(A) to use the arsenal, or a portion of the arsenal, and the skilled workforce at the arsenal to manufacture weapons, weapon components, or related products consistent with the purposes of the program; and

(B) to enter into subcontracts for the commercial use of the arsenal consistent with such purposes.

(2) A contract under paragraph (1) shall require the contractor to contribute toward the operation and maintenance of the Army manufacturing arsenal covered by the contract.

(3) In the event an Army manufacturing arsenal is converted to contractor operation, the Secretary may enter into a contract with the contractor to authorize the contractor, consistent with section 4543 of title 10, United States Code—

(A) to use the facility during the period of the program in a manner consistent with the purposes of the program; and

(B) to enter into subcontracts for the commercial use of the facility consistent with such purposes.

(d) LOAN GUARANTEES.—(1) Subject to paragraph (2), the Secretary of the Army 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 at an Army manufacturing arsenal under this section.

(2) Loan guarantees under this subsection 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).

(3) The Secretary of the Army may enter into agreements with the Administrator of the Small Business Administration or the Administrator of the Farmers Home Administration, the Administrator of the Rural Development Administration, or the head of other appropriate agencies of the Department of Agriculture, under which such Administrators may, under this subsection—

(A) process applications for loan guarantees;

(B) guarantee repayment of loans; and

(C) provide any other services to the Secretary of the Army to administer this subsection.

(4) An Administrator referred to in paragraph (3) 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 Administrator administers. To the extent practicable, each Administrator shall use the same procedures for processing loan guarantee applications under this subsection as the Administrator uses for processing loan guarantee applications under other loan guarantee programs that the Administrator administers.

(e) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under subsection (d) may not exceed—

(1) $20,000,000, with respect to any single borrower; and

(2) $320,000,000 with respect to all borrowers.

(f) TRANSFER OF FUNDS.—The Secretary of the Army may transfer to an Administrator providing services under subsection (d), and the Administrator may accept, such funds as may be necessary to administer loan guarantees under such subsection.

(g) REPORTING REQUIREMENTS.—(1) Not later than July 1 of each year in which a guarantee issued under subsection (d) is in effect, the Secretary of the Army shall submit to Congress a report specifying the amounts of loans guaranteed under such subsection during the preceding calendar year. No report is required after fiscal year 2002.

(2) Not later than July 1, 2001, the Secretary of the Army shall submit to the congressional defense committees a report on the implementation of the demonstration program. The report shall contain a comprehensive review of contracting at the Army manufacturing arsenals covered by the program and such recommendations as the Secretary considers appropriate regarding changes to the program.

I. MISCELLANEOUS MATTERS

1. INSPECTOR GENERAL ACT OF 1978

(Public Law 95–452, approved Oct. 12, 1978, 5 U.S.C. App.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Inspector General Act of 1978".

PURPOSE; ESTABLISHMENT

SEC. 2. In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is established—

(A)[1] in each of such establishments an office of Inspector General, subject to subparagraph (B); and

(B)[1] in the establishment of the Department of the Treasury—

(i) an Office of Inspector General of the Department of the Treasury; and

(ii) an Office of Treasury Inspector General for Tax Administration.

APPOINTMENT AND REMOVAL OF OFFICERS

SEC. 3. (a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general super-

[1] Margin so in law.

vision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

DUTIES AND RESPONSIBILITIES

SEC. 4. (a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such

establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector General of designated Federal entities defined under section 8F(a)(2), and any audit office established within a Federal entity defined under section 8F(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 11(2), or the Office of Inspector General of each designated Federal entity defined under section 8F(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

REPORTS

SEC. 5. (a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and oper-

ations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed; [1]

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report issued by the Office during the reporting period and for each audit report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management, for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

---

[1] Section 6009 of the Federal Acquisition Streamlining Act of 1994 (P.L. 103–355; 108 Stat. 3367; 5 U.S.C. app. 5 note) provides:

SEC. 6009. PROMPT RESOLUTION OF AUDIT RECOMMENDATIONS.

Federal agencies shall resolve or take corrective action on all Office of Inspector General audit report findings within a maximum of six months after their issuance, or, in the case of audits performed by non-Federal auditors, six months after receipt of the report by the Federal Government.

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;

(12) information concerning any significant management decision with which the Inspector General is in disagreement; and

(13) the information described under section 05(b) of the Federal Financial Management Improvement Act of 1996.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports and the dollar value of disallowed costs, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of recommendations that were actually completed; and

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report,

except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to

authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section—

(1) the term "questioned cost" means a cost that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

AUTHORITY; ADMINISTRATION PROVISIONS

SEC. 6. (a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal

agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) For purposes of the provisions of title 5, United States Code, governing the Senior Executive Service, any reference in such provisions to the "appointing authority" for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an Inspector General, be deemed to be a reference to such Inspector General.

EMPLOYEE COMPLAINTS

SEC. 7. (a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SEC. 8. (a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the congressional committees specified in paragraph (3) and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense, except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the Coast Guard shall be deemed to be an employee of such department or agency.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the congressional committees specified in paragraph (1).

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

SPECIAL PROVISIONS RELATING TO THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 8A. (a)[1] In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency.

[1] Section 205 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427 of the 106th Congress, as introduced on November 17, 1999, and enacted into law by section 1000(a)(7) of Public Law 106–113 (113 Stat. 1535)), sought to amend section 8A(a) by striking "and" at the end of paragraph (1); striking the period at the end of paragraph (2) and inserting "; and"; and adding at the end a new paragraph (3) as follows: "(3) shall supervise, direct, and control audit and investigative activities relating to programs and operations within the Inter-American Foundation and the African Development Foundation.".

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(d) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(e) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961.

(f) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961, an employee of the Inter-American Foundation, and an employee of the African Development Foundation.

SPECIAL PROVISIONS CONCERNING THE NUCLEAR REGULATORY COMMISSION

SEC. 8B. (a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, but shall not delegate such authority to any other officer or employee of the Commission.

(b) Notwithstanding sections 6(a) (7) and (8), the Inspector General of the Nuclear Regulatory Commission is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments and employment, and the obtaining of such services, within the Nuclear Regulatory Commission.

SEC. 8C. SPECIAL PROVISIONS CONCERNING THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) DELEGATION.—The Chairperson of the Federal Deposit Insurance Corporation may delegate the authority specified in the second sentence of section 3(a) to the Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation,

but may not delegate such authority to any other officer or employee of the Corporation.

(b) PERSONNEL.—Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of the Federal Deposit Insurance Corporation may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the Federal Deposit Insurance Corporation.

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF THE TREASURY

SEC. 8D. (a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

(E) intelligence or counterintelligence matters; or

(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94–524).

(2) With respect to the information described under paragraph (1), the Secretary of the Treasury may prohibit the Inspector General of the Department of the Treasury from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent significant impairment to the national interests of the United States.

(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Department of the Treasury shall transmit a copy of such notice to the Committees on

Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(4)[1] The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration.

(b)(1) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service,.[2] The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.

(2)[1] The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

(3)[1] The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will—

(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations.

(c) Notwithstanding subsection (b), the Inspector General of the Department of the Treasury may initiate, conduct and supervise such audits and investigations in the Department of the Treasury (including the bureaus and services referred to in subsection (b)) as the Inspector General of the Department of the Treasury considers appropriate.

(d) If the Inspector General of the Department of the Treasury initiates an audit or investigation under subsection (c) concerning a bureau or service referred to in subsection (b), the Inspector General of the Department of the Treasury may provide the head of the office of such bureau or service referred to in subsection (b) with written notice that the Inspector General of the Department of the Treasury has initiated such an audit or investigation. If the Inspector General of the Department of the Treasury issues a notice under the preceding sentence, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General of the Department of the Treasury and any other audit or investigation of such matter shall cease.

(e)(1) The Treasury Inspector General for Tax Administration shall have access to returns and return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, only in

[1] Margin so in law.

[2] So in law. See the amendment made by section 1103(e)(1) of the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105–206; 112 Stat. 709). The amendment probably should have struck the comma at the beginning of the text.

accordance with the provisions of section 6103 of such Code and this Act.

(2)[1] The Internal Revenue Service shall maintain the same system of standardized records or accountings of all requests from the Treasury Inspector General for Tax Administration for inspection or disclosure of returns and return information (including the reasons for and dates of such requests), and of returns and return information inspected or disclosed pursuant to such requests, as described under section 6103(p)(3)(A) of the Internal Revenue Code of 1986. Such system of standardized records or accountings shall also be available for examination in the same manner as provided under section 6103(p)(3) of the Internal Revenue Code of 1986.

(3)[1] The Treasury Inspector General for Tax Administration shall be subject to the same safeguards and conditions for receiving returns and return information as are described under section 6103(p)(4) of the Internal Revenue Code of 1986.

(f) An audit or investigation conducted by the Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration shall not affect a final decision of the Secretary of the Treasury or his delegate under section 6406 of the Internal Revenue Code of 1986.

(g)(1) Any report required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives.

(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue.

(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector

[1] Margins so in law.

General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service—

(1) during the 2-year period preceding the date of appointment to such position; or

(2) during the 5-year period following the date such individual ends service in such position.

(k)(1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration—

(A) shall have the duty to enforce criminal provisions under section 7608(b) of the Internal Revenue Code of 1986;

(B) in addition to the functions authorized under section 7608(b)(2) of such Code, may carry firearms;

(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of background checks and the providing of physical security; and

(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to—

(i) the performance of a law enforcement function under paragraph (1); and

(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provision specified in paragraph (1).

(l)(1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

(2)(A) Any final report of an audit conducted by the Treasury Inspector General for Tax Administration shall be timely submitted

by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

(B) The Treasury Inspector General for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF JUSTICE

SEC. 8E. (a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing civil or criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) intelligence or counterintelligence matters; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Justice—

(1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General considers appropriate;

(2) shall give particular regard to the activities of the Counsel, Office of Professional Responsibility of the Department and the audit, internal investigative, and inspection units outside the Office of Inspector General with a view toward avoiding duplication and insuring effective coordination and cooperation; and

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department for investigation, information

or allegations relating to the conduct of an officer or employee of the Department of Justice employed in an attorney, criminal investigative, or law enforcement position that is or may be a violation of law, regulation, or order of the Department or any other applicable standard of conduct, except that no such referral shall be made if the officer or employee is employed in the Office of Professional Responsibility of the Department.

(c) Any report required to be transmitted by the Attorney General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

SPECIAL PROVISIONS CONCERNING THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

SEC. 8F. (a) Notwithstanding the provisions of paragraphs (7) and (8) of section 6(a), it is within the exclusive jurisdiction of the Inspector General of the Corporation for National and Community Service to—

(1) appoint and determine the compensation of such officers and employees in accordance with section 195(b) of the National and Community Service Trust Act of 1993; and

(2) procure the temporary and intermittent services of and compensate such experts and consultants, in accordance with section 3109(b) of title 5, United States Code,

as may be necessary to carry out the functions, powers, and duties of the Inspector General.

(b) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits any report to the Congress under subsection (a) or (b) of section 5, the Chief Executive Officer shall transmit such report to the Board of Directors of such Corporation.

(c) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits a report described under section 5(b) to the Board of Directors as provided under subsection (b) of this section, the Chief Executive Officer shall also transmit any audit report which is described in the statement required under section 5(b)(4) to the Board of Directors. All such audit reports shall be placed on the agenda for review at the next scheduled meeting of the Board of Directors following such transmittal. The Chief Executive Officer of the Corporation shall be present at such meeting to provide any information relating to such audit reports.

(d) No later than the date on which the Inspector General of the Corporation for National and Community Service reports a problem, abuse, or deficiency under section 5(d) to the Chief Executive Officer of the Corporation, the Chief Executive Officer shall report such problem, abuse, or deficiency to the Board of Directors.

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 11(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means Amtrak,[1] the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Denali Commission, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation[2], the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

---

[1] Section 409(a)(1) of the Amtrak Reform and Accountability Act of 1997 (P.L. 105–134; 111 Stat. 2586) amends section 8G(a)(2) by striking "Amtrak,". Section 409(a)(2) of P.L. 105–134 provides as follows:

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect at the beginning of the first fiscal year after a fiscal year for which Amtrak receives no Federal subsidy.

[2] The words "the Federal Deposit Insurance Corporation" probably should be omitted in section 8G(2) to reflect the probable intent of the amendment made by section 23(a)(4) of the Resolution Trust Corporation Completion Act (P.L. 103–204; 107 Stat. 2408), which amended section 8F, rather than 8G, by striking out those words.

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board; and

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

(e) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall promptly communicate in writing the reasons for any such removal or transfer to both Houses of the Congress.

(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the "Inspector General") shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation per-

formed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

(I) ongoing civil or criminal investigations or proceedings;

(II) undercover operations;

(III) the identity of confidential sources, including protected witnesses;

(IV) intelligence or counterintelligence matters; or

(V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

(i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and

(ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(3) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(4) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of title 39, United States Code.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prose-

cutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

SEC. 8H. (a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949.

(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

(b) Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the head of the establishment.

(c) Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

(d)(1) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(2) The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee—

(A) before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the

employee's intent to contact the intelligence committees directly; and

(B) obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(3) A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

(e) The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(f) An action taken by the head of an establishment or an Inspector General under this section shall not be subject to judicial review.

(g) In this section:

(1) The term "urgent concern" means any of the following:

(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(B) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(C) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under section 7(c) in response to an employee's reporting an urgent concern in accordance with this section.

(2) The term "intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

RULE OF CONSTRUCTION OF SPECIAL PROVISIONS

SEC. 8I. The special provisions under section 8, 8A, 8B, 8C, 8D, 8E or 8F of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8G(a).

TRANSFER OF FUNCTIONS

SEC. 9. (a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act;

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94–505);

(G) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(H) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(I) of the Department of Justice, the offices of that Department referred to as (i) the "Audit Staff, Justice Management Division", (ii) the "Policy and Procedures Branch, Office of the Comptroller, Immigration and Naturalization Service", the "Office of Professional Responsibility, Immigration and Naturalization Service", and the "Office of Program Inspections, Immigration and Naturalization Service", (iii) the "Office of Internal Inspection, United States Marshals Service", (iv) the "Financial Audit Section, Office of Financial Management, Bureau of Prisons" and the "Office of Inspections, Bureau of Prisons", and (v) from the Drug Enforcement Administration, that portion of the "Office of Inspections" which is engaged in internal audit activities, and that portion of the "Office of Planning and Evaluation" which is engaged in program review activities;

(J) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(K) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department,

the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(L)(i) of the Department of the Treasury, the office of that department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms", the "Office of Internal Affairs, United States Customs Service", and the "Office of Inspections, United States Secret Service" which is engaged in internal audit activities;

(ii)[1] of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Office of Chief Inspector of the Internal Revenue Service;

(M) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(N) of the Federal Emergency Management Agency, the office of that agency referred to as the "Office of Inspector General";

(O) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(P) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(Q) of the Nuclear Regulatory Commission, the office of that commission referred to as the "Office of Inspector and Auditor";

(R) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(S) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

(T) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations";

(U) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and[2]

[1] The margin of clause (ii) so in law.

[2] The word "and" in subparagraph (U) probably should be deleted and moved to the end of subparagraph (V).

(V) of the Corporation for National and Community Service, the Office of Inspector General of ACTION;

(W) of the Social Security Administration, the functions of the Inspector General of the Department of Health and Human Services which are transferred to the Social Security Administration by the Social Security Independence and Program Improvements Act of 1994 (other than functions performed pursuant to section 105(a)(2) of such Act), except that such transfers shall be made in accordance with the provisions of such Act and shall not be subject to subsections (b) through (d) of this section; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 10. (a) [Contained an amendment to 5 U.S.C. 5315 to establish certain positions in level IV of the Executive Schedule.]

(b) [Contained an amendment to 5 U.S.C. 5316 to establish certain positions in level V of the Executive Schedule.]

(c) [Contained technical amendments to P.L. 94–505 which established an Inspector General at the Department of H.E.W.]

DEFINITIONS

SEC. 11. As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Develop-

ment, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; and the chief executive officer of the Resolution Trust Corporation; and the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority; as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or the Veterans' Administration, the Social Security Administration, or the Tennessee Valley Authority; as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

EFFECTIVE DATE

SEC. 12. The provisions of this Act and the amendments made by this Act shall take effect October 1, 1978.

2. AUTHORIZATION FOR INSTRUCTION OF CIVILIAN STUDENTS AT FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE

Section 559 of the National Defense Authorization Act for Fiscal Year 1995

(Public Law 103–337; approved Oct. 5, 1994)

SEC. 559. [10 U.S.C. 4411 note] AUTHORIZATION FOR INSTRUCTION OF CIVILIAN STUDENTS AT FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.

(a) ADMISSION OF CIVILIANS AS STUDENTS.—(1) The Secretary of the Army may enter into an agreement with an accredited institution of higher education (or a consortium of such institutions) under which students enrolled at an institution of higher education that is a party to the agreement may receive instruction at the Foreign Language Center of the Defense Language Institute on a space-available basis.

(2) The Secretary may also permit other persons who would benefit from the instruction provided at the Center, as determined by the Secretary, to receive instruction at the Center on a cost-reimbursable, space-available basis.

(b) SELECTION AND ATTENDANCE.—(1) The Secretary shall select the persons who will be permitted to receive instruction at the Center pursuant to subsection (a). In the case of agreements under subsection (a)(1), the Secretary shall consult with the other parties to the agreements to establish qualifications and methods of selection for persons to receive instruction at the Center.

(2) Except as the Secretary determines necessary, a person who receives instruction at the Center pursuant to subsection (a) shall be subject to the same regulations governing attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

(c) REIMBURSEMENT OPTIONS FOR CERTAIN INSTRUCTION.—In the case of instruction provided to students described in subsection (a)(1), the Secretary may provide the instruction on a cost-reimbursable basis, a reimbursement-in-kind basis, or a combination of both options. Regardless of the reimbursement option, the value of the reimbursement received under this subsection may not be less than the amount charged for providing language instruction to Federal employees who are not Department of Defense employees. The Secretary may not delegate the authority to accept an offer for in-kind reimbursement below the level of the Assistant Secretary of the Army.

(d) RETENTION OF FUNDS.—Amounts collected under subsection (a) or (c) to reimburse the Center for the costs of providing instruction to students under subsection (a) shall be credited to funds

available for compensation of instructors at the Center and to defray direct civilian student costs to the school.

(e) CENTER DEFINED.—For purposes of this section, the term "Center" means the Foreign Language Center of the Defense Language Institute.

(f) EXPIRATION OF AUTHORITY.—No student may be admitted to the Center under subsection (a) to commence a program of instruction beginning after September 30, 1997.

3. CHAPTER 407—CORPORATION FOR THE PROMOTION OF RIFLE PRACTICE AND FIREARMS SAFETY

(Chapter 407 of title 36, United States Code)

CHAPTER 407—CORPORATION FOR THE PROMOTION OF RIFLE PRACTICE AND FIREARMS SAFETY [1]

SUBCHAPTER I—CORPORATION

Sec.
40701. Organization.
40702. Governing body.
40703. Powers.
40704. Restrictions.
40705. Duty to maintain tax-exempt status.
40706. Distribution of assets on dissolution.
40707. Nonapplication of audit requirements.

SUBCHAPTER II—CIVILIAN MARKSMANSHIP PROGRAM

40721. Responsibility of corporation.
40722. Functions.
40723. Eligibility for participation.
40724. Priority of youth participation.
40725. National Matches and small-arms firing school.
40726. Allowances for junior competitors.
40727. Army support.
40728. Transfer of firearms, ammunition, and parts.
40729. Reservation of firearms, ammunition, and parts.
40730. Surplus property.
40731. Issuance or loan of firearms and supplies.
40732. Sale of firearms and supplies.
40733. Applicability of other law.

SUBCHAPTER I—CORPORATION

§ 40701. Organization

(a) FEDERAL CHARTER.—Corporation for the Promotion of Rifle Practice and Firearms Safety (in this chapter, the "corporation") is a federally chartered corporation.

(b) NON-GOVERNMENTAL STATUS.—The corporation is a private corporation, not a department, agency, or instrumentality of the United States Government. An officer or employee of the corporation is not an officer or employee of the Government.

§ 40702. Governing body

(a) BOARD OF DIRECTORS.—(1) The board of directors is the governing body of the corporation. The board of directors may adopt bylaws, policies, and procedures for the corporation and may

[1] This chapter was enacted by section 1 of Public Law 105–225 (112 Stat. 1253) as part of the codification of title 36, United States Code. This chapter replaced the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, which was enacted as title XVI of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 515).

take any other action that it considers necessary for the management and operation of the corporation.

(2) The board shall have at least 9 directors.

(3) The term of office of a director is 2 years. A director may be reappointed.

(4) A vacancy on the board of directors shall be filled by a majority vote of the remaining directors.

(b) DIRECTOR OF CIVILIAN MARKSMANSHIP.—(1) The board of directors shall appoint the Director of Civilian Marksmanship.

(2) The Director is responsible for—

(A) the daily operation of the corporation; and

(B) the duties of the corporation under subchapter II of this chapter.

§ 40703. Powers

The corporation may—

(1) adopt, use, and alter a corporate seal, which shall be judicially noticed;

(2) make contracts;

(3) acquire, own, lease, encumber, and transfer property as necessary or convenient to carry out the activities of the corporation;

(4) incur and pay obligations;

(5) charge fees to cover the corporation's costs in carrying out the Civilian Marksmanship Program; and

(6) do any other act necessary and proper to carry out the activities of the corporation.

§ 40704. Restrictions

(a) PROFIT.—The corporation may not operate for profit.

(b) USE OF AMOUNTS COLLECTED.—Amounts collected under section 40703(3) and (5) of this title, including proceeds from the sale of firearms, ammunition, repair parts, and other supplies, may be used only to support the Civilian Marksmanship Program.

§ 40705. Duty to maintain tax-exempt status

The corporation shall be operated in a manner and for purposes that qualify the corporation for exemption from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)) as an organization described in section 501(c)(3) of that Code (26 U.S.C. 501(c)(3)).

§ 40706. Distribution of assets on dissolution

(a) SECRETARY OF THE ARMY.—On dissolution of the corporation, title to the following items, and the right to possess the items, vest in the Secretary of the Army—

(1) firearms stored at Defense Distribution Depot, Anniston, Anniston, Alabama on the date of dissolution.

(2) M–16 rifles under control of the corporation.

(3) trophies received from the National Board for the Promotion of Rifle Practice through the date of dissolution.

(b) TAX-EXEMPT ORGANIZATIONS.—(1) On dissolution of the corporation, an asset not described in subsection (a) of this section may be distributed to an organization that—

(A) is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)) as an organization described in section 501(c)(3) of that Code (26 U.S.C. 501(c)(3)); and

(B) performs functions similar to the functions described in section 40722 of this title.

(2) An asset distributed under this subsection may not be distributed to an individual.

(c) TREASURY.—On dissolution of the corporation, any asset not distributed under subsection (a) or (b) of this section shall be sold and the proceeds shall be deposited in the Treasury.

§ 40707. Nonapplication of audit requirements

The audit requirements of section 10101 of this title do not apply to the corporation.

SUBCHAPTER II—CIVILIAN MARKSMANSHIP PROGRAM

§ 40721. Responsibility of corporation

The corporation shall supervise and control the Civilian Marksmanship Program.

§ 40722. Functions

The functions of the Civilian Marksmanship Program are—

(1) to instruct citizens of the United States in marksmanship;

(2) to promote practice and safety in the use of firearms;

(3) to conduct competitions in the use of firearms and to award trophies, prizes, badges, and other insignia to competitors;

(4) to secure and account for firearms, ammunition, and other equipment for which the corporation is responsible;

(5) to issue, loan, or sell firearms, ammunition, repair parts, and other supplies under sections 40731 and 40732 of this title; and

(6) to procure necessary supplies and services to carry out the Program.

§ 40723. Eligibility for participation

(a) CERTIFICATION.—(1) An individual shall certify by affidavit, before participating in an activity sponsored or supported by the corporation, that the individual—

(A) has not been convicted of a felony;

(B) has not been convicted of a violation of section 922 of title 18; and

(C) is not a member of an organization that advocates the violent overthrow of the United States Government.

(2) The Director of Civilian Marksmanship may require an individual to provide certification from law enforcement agencies to verify that the individual has not been convicted of a felony or a violation of section 922 of title 18.

(b) INELIGIBILITY.—An individual may not participate in an activity sponsored or supported by the corporation if the individual—

(1) has been convicted of a felony; or

(2) has been convicted of a violation of section 922 of title 18.

(c) LIMITING PARTICIPATION.—The Director may limit participation in the program as necessary to ensure—

(1) the safety of participants;

(2) the security of firearms, ammunition, and equipment; and

(3) the quality of instruction in the use of firearms.

§ 40724. Priority of youth participation

In carrying out the Civilian Marksmanship Program, the corporation shall give priority to activities that benefit firearms safety, training, and competition for youth and that reach as many youth participants as possible.

§ 40725. National Matches and small-arms firing school

(a) ANNUAL COMPETITION.—An annual competition called the "National Matches" and consisting of rifle and pistol matches for a national trophy, medals, and other prizes shall be held as prescribed by the Secretary of the Army.

(b) ELIGIBLE PARTICIPANTS.—The National Matches are open to members of the Armed Forces, National Guard, Reserve Officers' Training Corps, Air Force Reserve Officers' Training Corps, Citizens' Military Training Camps, Citizens' Air Training Camps, and rifle clubs, and to civilians.

(c) SMALL-ARMS FIRING SCHOOL.—A small-arms firing school shall be held in connection with the National Matches.

(d) OTHER COMPETITIONS.—Competitions for which trophies and medals are provided by the National Rifle Association of America shall be held in connection with the National Matches.

§ 40726. Allowances for junior competitors

(a) DEFINITION.—In this section, a "junior competitor" is a competitor at the National Matches, a small-arms firing school, a competition in connection with the National Matches, or a special clinic under section 40725 of this title who is—

(1) less than 18 years of age; or

(2) a member of a gun club organized for the students of a college or university.

(b) SUBSISTENCE ALLOWANCE.—A junior competitor may be paid a subsistence allowance in an amount prescribed by the Secretary of the Army.

(c) TRAVEL ALLOWANCE.—A junior competitor may be paid a travel allowance in an amount prescribed by the Secretary instead of travel expenses and subsistence while traveling. The travel allowance for the return trip may be paid in advance.

§ 40727. Army support

(a) LOGISTICAL SUPPORT.—The Secretary of the Army shall provide logistical support to the Civilian Marksmanship Program for competitions and other activities. The corporation shall reimburse the Secretary for incremental direct costs incurred in providing logistical support. The reimbursements shall be credited to the

appropriations account of the Department of the Army that is charged to provide the logistical support.

(b) NATIONAL MATCHES.—(1) The National Matches may be held at Department of Defense facilities where the National Matches were held before February 10, 1996.

(2) The Secretary shall provide, without cost to the corporation, members of the National Guard and Army Reserve to support the National Matches as part of the annual training under title 10 and title 32.

(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

§ 40728. Transfer of firearms, ammunition, and parts

(a) REQUIRED TRANSFERS.—In accordance with subsection (b) of this section, the Secretary of the Army shall transfer to the corporation all firearms and ammunition that, on February 9, 1996, were under the control of the director of civilian marksmanship (as that position existed under section 4307 of title 10 on February 9, 1996), including—

(1) all firearms on loan to affiliated clubs and State associations;

(2) all firearms in the possession of the Civilian Marksmanship Support Detachment; and

(3) all M–1 Garand and caliber .22 rimfire rifles stored at Defense Distribution Depot, Anniston, Anniston, Alabama.

(b) TIME FOR TRANSFERS.—The Secretary shall transfer firearms and ammunition under subsection (a) of this section as and when necessary to enable the corporation—

(1) to issue or loan firearms or ammunition under section 40731 of this title; or

(2) to sell firearms or ammunition under section 40732 of this title.

(c) VESTING OF TITLE IN TRANSFERRED ITEMS.—Title to an item transferred to the corporation under this section shall vest in the corporation—

(1) on the issuance of the item to an eligible recipient under section 40731 of this title; or

(2) immediately before the corporation delivers the item to a purchaser in accordance with a contract for sale of the item that is authorized under section 40732 of this title.

(d) STORAGE OF FIREARMS.—Firearms stored at Defense Distribution Depot, Anniston, Anniston, Alabama, before February 10, 1996, and used for the Civilian Marksmanship Program (as that program existed under section 4308(e) of title 10 before February 10, 1996), shall remain at that facility or another storage facility designated by the Secretary, without cost to the corporation, until the firearms are issued, loaned, or sold by the corporation, or otherwise transferred to the corporation.

(e) DISCRETIONARY TRANSFER OF PARTS.—The Secretary may transfer from the inventory of the Department of the Army to the corporation any part from a rifle designated to be demilitarized.

(f) LIMITATION ON DEMILITARIZATION OF M–1 RIFLES.—After February 10, 1996, the Secretary may not demilitarize an M–1 Ga-

rand rifle in the inventory of the Army unless the Defense Logistics Agency decides the rifle is unserviceable.

(g) COST OF TRANSFERS.—A transfer of firearms, ammunition, or parts to the corporation under this section shall be made without cost to the corporation, except that the corporation shall assume the cost of preparation and transportation of firearms and ammunition transferred under this section.

§ 40729. Reservation of firearms, ammunition, and parts

(a) RESERVATION.—The Secretary of the Army shall reserve for the corporation—

(1) firearms described in section 40728(a) of this title;

(2) ammunition for firearms described in 40728(a) of this title;

(3) M–16 rifles held by the Department of the Army on February 10, 1996, and used to support the small-arms firing school; and

(4) parts from, and other supplies for, surplus caliber .30 and caliber .22 rimfire rifles.

(b) EXCEPTION.—This section does not supersede the authority provided in section 1208 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 372 note).

§ 40730. Surplus property

The corporation may obtain surplus property from the Defense Reutilization Marketing Service to carry out the Civilian Marksmanship Program. A transfer of property to the corporation under this section shall be made without cost to the corporation.

§ 40731. Issuance or loan of firearms and supplies

(a) ISSUANCE OR LOAN.—For purposes of training and competition, the corporation may issue or loan, with or without charges to recover administrative costs, caliber .22 rimfire and caliber .30 surplus rifles, air rifles, caliber .22 and .30 ammunition, repair parts, and other supplies necessary for activities related to the Civilian Marksmanship Program to—

(1) organizations affiliated with the corporation that provide firearms training to youth;

(2) the Boy Scouts of America;

(3) 4–H Clubs;

(4) the Future Farmers of America; and

(5) other youth oriented organizations.

(b) SECURITY OF FIREARMS.—The corporation shall ensure adequate oversight and accountability for firearms issued or loaned under this section. The corporation shall prescribe procedures for the security of issued or loaned firearms in accordance with United States, State, and local laws.

§ 40732. Sale of firearms and supplies

(a) AFFILIATED ORGANIZATIONS.—The corporation may sell, at fair market value, caliber .22 rimfire and caliber .30 surplus rifles, air rifles, caliber .22 and .30 ammunition, repair parts, and other

supplies to organizations affiliated with the corporation that provide training in the use of firearms.

(b) GUN CLUB MEMBERS.—(1) The corporation may sell, at fair market value, caliber .22 rimfire and caliber .30 surplus rifles, ammunition, repair parts and other supplies necessary for target practice to a citizen of the United States who is over 18 years of age and who is a member of a gun club affiliated with the corporation.

(2) Except as provided in section 40733 of this title, sales under this subsection are subject to applicable United States, State, and local law. In addition to any other requirement, the corporation shall establish procedures to obtain a criminal records check of the individual with United States Government and State law enforcement agencies.

(c) LIMITATION ON SALES.—(1) The corporation may not sell a repair part designed to convert a firearm to fire in a fully automatic mode.

(2) The corporation may not sell any item to an individual who has been convicted of—

(A) a felony; or

(B) a violation of section 922 of title 18.

§ 40733. Applicability of other law

Section 922(a)(1)–(3) and (5) of title 18 does not apply to the shipment, transportation, receipt, transfer, sale, issuance, loan, or delivery by the corporation, of an item that the corporation is authorized to issue, loan, sell, or receive under this chapter.

4. MISCELLANEOUS AUTHORITIES TO TRANSFER EXCESS DEFENSE PERSONAL PROPERTY

a. Wildfire Suppression Aircraft Transfer Act of 1996

(Public Law 104–307; approved Oct. 14, 1996)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wildfire Suppression Aircraft Transfer Act of 1996".

SEC. 2. [10 U.S.C. 2576 note] AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.

(a) AUTHORITY.—(1) Notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2005, sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

(A) excess to the needs of the Department; and

(B) acceptable for commercial sale.

(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

(d) REGULATIONS.—(1) As soon as practicable after October 14, 1996, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. The regulations prescribed under this

paragraph shall be effective until the end of the period specified in subsection (a)(1).

(2) The regulations shall—

(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

(f) REPORT.—Not later than March 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

(2) the persons or entities to which the aircraft were sold; and

(3) an accounting of the current use of the aircraft sold.

(g) CONSTRUCTION.—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law.

---

b. Authority to Sell Aircraft and Aircraft Parts for Use in Responding to Oil Spills

(Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181; approved Apr. 5, 2000))

SEC. 740. [10 U.S.C. 2576 note] AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS.

(a) AUTHORITY.—

(1) SALE OF AIRCRAFT AND AIRCRAFT PARTS.—Notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may sell, during

the period beginning on the date of the enactment of this Act and ending September 30, 2002, aircraft and aircraft parts referred to in paragraph (2) to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(2) AIRCRAFT AND AIRCRAFT PARTS THAT MAY BE SOLD.—The aircraft and aircraft parts that may be sold under paragraph (1) are aircraft and aircraft parts of the Department of Defense that are determined by the Secretary of Defense to be—

(A) excess to the needs of the Department; and

(B) acceptable for commercial sale.

(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

(1) shall have as their primary purpose usage for oil spill spotting, observation, and dispersant delivery and may not have any secondary purpose that would interfere with oil spill response efforts under an oil spill response plan; and

(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary of Transportation.

(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Transportation certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(d) REGULATIONS.—

(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Transportation and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

(2) CONTENTS.—The regulations shall—

(A) ensure that the sale of the aircraft and aircraft parts is made at a fair market value, as determined by the Secretary of Defense, and, to the extent practicable, on a competitive basis;

(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other operators in accordance with the conditions set forth in subsection (b) or pursuant to subsection (e); and

(D) ensure, to the maximum extent practicable, that the Secretary of Defense consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of regulations prescribed under subsection (d).

(f) REPORT.—Not later than March 31, 2002, the Secretary of Defense shall transmit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

(1) the number and types of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

(2) the persons or entities to which the aircraft were sold; and

(3) an accounting of the current use of the aircraft sold.

(g) STATUTORY CONSTRUCTION.—

(1) AUTHORITY OF ADMINISTRATOR.—Nothing in this section may be construed as affecting the authority of the Administrator under any other provision of law.

(2) CERTIFICATION REQUIREMENTS.—Nothing in this section may be construed to waive, with respect to an aircraft sold under the authority of this section, any requirement to obtain a certificate from the Administrator to operate the aircraft for any purpose (other than oil spill spotting, observation, and dispersant delivery) for which such a certificate is required.

(h) PROCEEDS FROM SALE.—The net proceeds of any amounts received by the Secretary of Defense from the sale of aircraft and aircraft parts under this section shall be covered into the general fund of the Treasury as miscellaneous receipts.

5. WARRANTY CLAIMS RECOVERY PILOT PROGRAM AND FRAUD, WASTE, AND ABUSE INVESTIGATIONS

Sections 391 and 392 of the National Defense Authorization Act for Fiscal Year 1998

(Public Law 105–85; approved Nov. 18, 1997)

SEC. 391. [10 U.S.C. 2304 note] WARRANTY CLAIMS RECOVERY PILOT PROGRAM.

(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense may carry out a pilot program to use commercial sources of services to improve the collection of Department of Defense claims under aircraft engine warranties.

(b) CONTRACTS.—Exercising the authority provided in section 3718 of title 31, United States Code, the Secretary of Defense may enter into contracts under the pilot program to provide for the following services:

(1) Collection services.

(2) Determination of amounts owed the Department of Defense for repair of aircraft engines for conditions covered by warranties.

(3) Identification and location of the sources of information that are relevant to collection of Department of Defense claims under aircraft engine warranties, including electronic data bases and document filing systems maintained by the Department of Defense or by the manufacturers and suppliers of the aircraft engines.

(4) Services to define the elements necessary for an effective training program to enhance and improve the performance of Department of Defense personnel in collecting and organizing documents and other information that are necessary for efficient filing, processing, and collection of Department of Defense claims under aircraft engine warranties.

(c) CONTRACTOR FEE.—Under the authority provided in section 3718(d) of title 31, United States Code, a contract entered into under the pilot program shall provide for the contractor to be paid, out of the amount recovered by the contractor under the program, such percentages of the amount recovered as the Secretary of Defense determines appropriate.

(d) RETENTION OF RECOVERED FUNDS.—Subject to any obligation to pay a fee under subsection (c), any amount collected for the Department of Defense under the pilot program for a repair of an aircraft engine for a condition covered by a warranty shall be credited to an appropriation available for repair of aircraft engines for the fiscal year in which collected and shall be available for the

same purposes and same period as the appropriation to which credited.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) TERMINATION OF AUTHORITY.—The pilot program shall terminate on September 30, 2000, and contracts entered into under this section shall terminate not later than that date.

(g) REPORTING REQUIREMENTS.—(1) Not later than January 1, 2001, the Secretary of Defense shall submit to Congress a report on the pilot program. The report shall include the following:

(A) The number of contracts entered into under the program.

(B) The extent to which the services provided under the contracts resulted in financial benefits for the Federal Government.

(C) Any additional comments and recommendations that the Secretary considers appropriate regarding use of commercial sources of services for collection of Department of Defense claims under aircraft engine warranties.

(2) Not later than March 1, 2001, the Comptroller General shall submit to Congress a report containing the results of a review by the Comptroller General of the pilot program. In the review, the Comptroller General shall—

(A) assess the success of the methods used in the demonstration program to identify and recover Department of Defense claims under aircraft engine warranties;

(B) determine the total amount recovered by the Department of Defense under the pilot program;

(C) evaluate the report prepared by the Secretary under paragraph (1); and

(D) develop recommendations for improving the process by which warranty claims are recovered by the Department of Defense.

SEC. 392. [10 U.S.C. 113 note] PROGRAM TO INVESTIGATE FRAUD, WASTE, AND ABUSE WITHIN DEPARTMENT OF DEFENSE.

The Secretary of Defense shall maintain a specific coordinated program for the investigation of evidence of fraud, waste, and abuse within the Department of Defense, particularly fraud, waste, and abuse regarding finance and accounting matters and any fraud, waste, and abuse occurring in connection with overpayments made to vendors by the Department of Defense, including overpayments identified under section 354 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note).

6. GOVERNMENT INFORMATION SECURITY REFORM

a. Government Information Security

(Subchapter II of chapter 35 of title 44, United States Code)

SUBCHAPTER II—INFORMATION SECURITY

§ 3531. Purposes

The purposes of this subchapter are the following:

(1) To provide a comprehensive framework for establishing and ensuring the effectiveness of controls over information resources that support Federal operations and assets.

(2)(A) To recognize the highly networked nature of the Federal computing environment including the need for Federal Government interoperability and, in the implementation of improved security management measures, assure that opportunities for interoperability are not adversely affected.

(B) To provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities.

(3) To provide for development and maintenance of minimum controls required to protect Federal information and information systems.

(4) To provide a mechanism for improved oversight of Federal agency information security programs.

§ 3532. Definitions

(a) Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

(b) In this subchapter:

(1) The term "information technology" has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(2) The term "mission critical system" means any telecommunications or information system used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, that—

(A) is defined as a national security system under section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452);

(B) is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be classified in the interest of national defense or foreign policy; or

(C) processes any information, the loss, misuse, disclosure, or unauthorized access to or modification of, would have a debilitating impact on the mission of an agency.

§ 3533. Authority and functions of the Director

(a)(1) The Director shall establish governmentwide policies for the management of programs that—

(A) support the cost-effective security of Federal information systems by promoting security as an integral component of each agency's business operations; and

(B) include information technology architectures as defined under section 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425).

(2) Policies under this subsection shall—

(A) be founded on a continuing risk management cycle that recognizes the need to—

(i) identify, assess, and understand risk; and

(ii) determine security needs commensurate with the level of risk;

(B) implement controls that adequately address the risk;

(C) promote continuing awareness of information security risk; and

(D) continually monitor and evaluate policy and control effectiveness of information security practices.

(b) The authority under subsection (a) includes the authority to—

(1) oversee and develop policies, principles, standards, and guidelines for the handling of Federal information and information resources to improve the efficiency and effectiveness of governmental operations, including principles, policies, and guidelines for the implementation of agency responsibilities under applicable law for ensuring the privacy, confidentiality, and security of Federal information;

(2) consistent with the standards and guidelines promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 1441 note; Public Law 100–235; 101 Stat. 1729), require Federal agencies to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency;

(3) direct the heads of agencies to—

(A) identify, use, and share best security practices;

(B) develop an agencywide information security plan;

(C) incorporate information security principles and practices throughout the life cycles of the agency's information systems; and

(D) ensure that the agency's information security plan is practiced throughout all life cycles of the agency's information systems;

(4) oversee the development and implementation of standards and guidelines relating to security controls for Federal computer systems by the Secretary of Commerce through the

National Institute of Standards and Technology under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3);

(5) oversee and coordinate compliance with this section in a manner consistent with—

(A) sections 552 and 552a of title 5;

(B) sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4);

(C) section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

(D) sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 1441 note; Public Law 100–235; 101 Stat. 1729); and

(E) related information management laws; and

(6) take any authorized action under section 5113(b)(5) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1413(b)(5)) that the Director considers appropriate, including any action involving the budgetary process or appropriations management process, to enforce accountability of the head of an agency for information resources management, including the requirements of this subchapter, and for the investments made by the agency in information technology, including—

(A) recommending a reduction or an increase in any amount for information resources that the head of the agency proposes for the budget submitted to Congress under section 1105(a) of title 31;

(B) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources; and

(C) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources.

(c) The authorities of the Director under this section (other than the authority described in subsection (b)(6))—

(1) shall be delegated to the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President in the case of systems described under subparagraphs (A) and (B) of section 3532(b)(2);

(2) shall be delegated to the Secretary of Defense in the case of systems described under subparagraph (C) of section 3532(b)(2) that are operated by the Department of Defense, a contractor of the Department of Defense, or another entity on behalf of the Department of Defense; and

(3) in the case of all other Federal information systems, may be delegated only to the Deputy Director for Management of the Office of Management and Budget.

§ 3534. Federal agency responsibilities

(a) The head of each agency shall—

(1) be responsible for—

(A) adequately ensuring the integrity, confidentiality, authenticity, availability, and nonrepudiation of informa-

tion and information systems supporting agency operations and assets;

(B) developing and implementing information security policies, procedures, and control techniques sufficient to afford security protections commensurate with the risk and magnitude of the harm resulting from unauthorized disclosure, disruption, modification, or destruction of information collected or maintained by or for the agency; and

(C) ensuring that the agency's information security plan is practiced throughout the life cycle of each agency system;

(2) ensure that appropriate senior agency officials are responsible for—

(A) assessing the information security risks associated with the operations and assets for programs and systems over which such officials have control;

(B) determining the levels of information security appropriate to protect such operations and assets; and

(C) periodically testing and evaluating information security controls and techniques;

(3) delegate to the agency Chief Information Officer established under section 3506, or a comparable official in an agency not covered by such section, the authority to administer all functions under this subchapter including—

(A) designating a senior agency information security official who shall report to the Chief Information Officer or a comparable official;

(B) developing and maintaining an agencywide information security program as required under subsection (b);

(C) ensuring that the agency effectively implements and maintains information security policies, procedures, and control techniques;

(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

(E) assisting senior agency officials concerning responsibilities under paragraph (2);

(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

(5) ensure that the agency Chief Information Officer, in coordination with senior agency officials, periodically—

(A)(i) evaluates the effectiveness of the agency information security program, including testing control techniques; and

(ii) implements appropriate remedial actions based on that evaluation; and

(B) reports to the agency head on—

(i) the results of such tests and evaluations; and

(ii) the progress of remedial actions.

(b)(1) Each agency shall develop and implement an agencywide information security program to provide information security for

the operations and assets of the agency, including operations and assets provided or managed by another agency.

(2) Each program under this subsection shall include—

(A) periodic risk assessments that consider internal and external threats to—

(i) the integrity, confidentiality, and availability of systems; and

(ii) data supporting critical operations and assets;

(B) policies and procedures that—

(i) are based on the risk assessments required under subparagraph (A) that cost-effectively reduce information security risks to an acceptable level; and

(ii) ensure compliance with—

(I) the requirements of this subchapter;

(II) policies and procedures as may be prescribed by the Director; and

(III) any other applicable requirements;

(C) security awareness training to inform personnel of—

(i) information security risks associated with the activities of personnel; and

(ii) responsibilities of personnel in complying with agency policies and procedures designed to reduce such risks;

(D) periodic management testing and evaluation of the effectiveness of information security policies and procedures;

(E) a process for ensuring remedial action to address any significant deficiencies; and

(F) procedures for detecting, reporting, and responding to security incidents, including—

(i) mitigating risks associated with such incidents before substantial damage occurs;

(ii) notifying and consulting with law enforcement officials and other offices and authorities;

(iii) notifying and consulting with an office designated by the Administrator of General Services within the General Services Administration; and

(iv) notifying and consulting with an office designated by the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President for incidents involving systems described under subparagraphs (A) and (B) of section 3532(b)(2).

(3) Each program under this subsection is subject to the approval of the Director and is required to be reviewed at least annually by agency program officials in consultation with the Chief Information Officer. In the case of systems described under subparagraphs (A) and (B) of section 3532(b)(2), the Director shall delegate approval authority under this paragraph to the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President.

(c)(1) Each agency shall examine the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

(A) annual agency budgets;

(B) information resources management under subchapter I of this chapter;

(C) performance and results based management under the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.);

(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 through 2805 of title 39; and

(E) financial management under—

(i) chapter 9 of title 31, United States Code, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

(ii) the Federal Financial Management Improvement Act of 1996 (31 U.S.C. 3512 note) (and the amendments made by that Act); and

(iii) the internal controls conducted under section 3512 of title 31.

(2) Any significant deficiency in a policy, procedure, or practice identified under paragraph (1) shall be reported as a material weakness in reporting required under the applicable provision of law under paragraph (1).

(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Chief Information Officer, shall include as part of the performance plan required under section 1115 of title 31 a description of—

(A) the time periods; and

(B) the resources, including budget, staffing, and training, which are necessary to implement the program required under subsection (b)(1).

(2) The description under paragraph (1) shall be based on the risk assessment required under subsection (b)(2)(A).

§ 3535. Annual independent evaluation

(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency.

(2) Each evaluation by an agency under this section shall include—

(A) testing of the effectiveness of information security control techniques for an appropriate subset of the agency's information systems; and

(B) an assessment (made on the basis of the results of the testing) of the compliance with—

(i) the requirements of this subchapter; and

(ii) related information security policies, procedures, standards, and guidelines.

(3) The Inspector General or the independent evaluator performing an evaluation under this section may use an audit, evaluation, or report relating to programs or practices of the applicable agency.

(b)(1)(A) Subject to subparagraph (B), for agencies with Inspectors General appointed under the Inspector General Act of 1978 (5 U.S.C. App.) or any other law, the annual evaluation required under this section or, in the case of systems described under sub-

paragraphs (A) and (B) of section 3532(b)(2), an audit of the annual evaluation required under this section, shall be performed by the Inspector General or by an independent evaluator, as determined by the Inspector General of the agency.

(B) For systems described under subparagraphs (A) and (B) of section 3532(b)(2), the evaluation required under this section shall be performed only by an entity designated by the Secretary of Defense, the Director of Central Intelligence, or another agency head as designated by the President.

(2) For any agency to which paragraph (1) does not apply, the head of the agency shall contract with an independent evaluator to perform the evaluation.

(c) Each year, not later than the anniversary of the date of the enactment of this subchapter, the applicable agency head shall submit to the Director—

(1) the results of each evaluation required under this section, other than an evaluation of a system described under subparagraph (A) or (B) of section 3532(b)(2); and

(2) the results of each audit of an evaluation required under this section of a system described under subparagraph (A) or (B) of section 3532(b)(2).

(d)(1) The Director shall submit to Congress each year a report summarizing the materials received from agencies pursuant to subsection (c) in that year.

(2) Evaluations and audits of evaluations of systems under the authority and control of the Director of Central Intelligence and evaluations and audits of evaluation of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available only to the appropriate oversight committees of Congress, in accordance with applicable laws.

(e) Agencies and evaluators shall take appropriate actions to ensure the protection of information, the disclosure of which may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws.

§ 3536. Expiration

This subchapter shall not be in effect after the date that is two years after the date on which this subchapter takes effect. [1]

---

b. Section 1062 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(as enacted by Public Law 106–398; approved Oct. 30, 2000)

SEC. 1062. [44 U.S.C. 3531 note] RESPONSIBILITIES OF CERTAIN AGENCIES.

(a) DEPARTMENT OF COMMERCE.—Notwithstanding section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) and except as provided under subsection (b), the Secretary of Commerce, through the National Institute of Stand-

[1] Section 1065 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 44 U.S.C. 3531 note; approved Oct. 30, 2000) provides that the subchapter "shall take effect 30 days after the date of the enactment of this Act."

ards and Technology and with technical assistance from the National Security Agency, as required or when requested, shall—

(1) develop, issue, review, and update standards and guidance for the security of Federal information systems, including development of methods and techniques for security systems and validation programs;

(2) develop, issue, review, and update guidelines for training in computer security awareness and accepted computer security practices, with assistance from the Office of Personnel Management;

(3) provide agencies with guidance for security planning to assist in the development of applications and system security plans for such agencies;

(4) provide guidance and assistance to agencies concerning cost-effective controls when interconnecting with other systems; and

(5) evaluate information technologies to assess security vulnerabilities and alert Federal agencies of such vulnerabilities as soon as those vulnerabilities are known.

(b) DEPARTMENT OF DEFENSE AND THE INTELLIGENCE COMMUNITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this subtitle (including any amendment made by this subtitle)—

(A) the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President, shall, consistent with their respective authorities—

(i) develop and issue information security policies, standards, and guidelines for systems described under subparagraphs (A) and (B) of section 3532(b)(2) of title 44, United States Code (as added by section 1061 of this Act), that provide more stringent protection, to the maximum extent practicable, than the policies, principles, standards, and guidelines required under section 3533 of such title (as added by such section 1061); and

(ii) ensure the implementation of the information security policies, principles, standards, and guidelines described under clause (i); and

(B) the Secretary of Defense shall, consistent with his authority—

(i) develop and issue information security policies, standards, and guidelines for systems described under subparagraph (C) of section 3532(b)(2) of title 44, United States Code (as added by section 1061 of this Act), that are operated by the Department of Defense, a contractor of the Department of Defense, or another entity on behalf of the Department of Defense that provide more stringent protection, to the maximum extent practicable, than the policies, principles, standards, and guidelines required under section 3533 of such title (as added by such section 1061); and

(ii) ensure the implementation of the information security policies, principles, standards, and guidelines described under clause (i).

(2) MEASURES ADDRESSED.—The policies, principles, standards, and guidelines developed by the Secretary of Defense and the Director of Central Intelligence under paragraph (1) shall address the full range of information assurance measures needed to protect and defend Federal information and information systems by ensuring their integrity, confidentiality, authenticity, availability, and nonrepudiation.

(c) DEPARTMENT OF JUSTICE.—The Attorney General shall review and update guidance to agencies on—

(1) legal remedies regarding security incidents and ways to report to and work with law enforcement agencies concerning such incidents; and

(2) lawful uses of security techniques and technologies.

(d) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall—

(1) review and update General Services Administration guidance to agencies on addressing security considerations when acquiring information technology; and

(2) assist agencies in—

(A) fulfilling agency responsibilities under section 3534(b)(2)(F) of title 44, United States Code (as added by section 1061 of this Act); and

(B) the acquisition of cost-effective security products, services, and incident response capabilities.

(e) OFFICE OF PERSONNEL MANAGEMENT.—The Director of the Office of Personnel Management shall—

(1) review and update Office of Personnel Management regulations concerning computer security training for Federal civilian employees;

(2) assist the Department of Commerce in updating and maintaining guidelines for training in computer security awareness and computer security best practices; and

(3) work with the National Science Foundation and other agencies on personnel and training initiatives (including scholarships and fellowships, as authorized by law) as necessary to ensure that the Federal Government—

(A) has adequate sources of continuing information security education and training available for employees; and

(B) has an adequate supply of qualified information security professionals to meet agency needs.

(f) INFORMATION SECURITY POLICIES, PRINCIPLES, STANDARDS, AND GUIDELINES.—

(1) ADOPTION OF POLICIES, PRINCIPLES, STANDARDS, AND GUIDELINES OF OTHER AGENCIES.—The policies, principles, standards, and guidelines developed under subsection (b) by the Secretary of Defense, the Director of Central Intelligence, and another agency head as designated by the President may be adopted, to the extent that such policies are consistent with policies and guidance developed by the Director of the Office of Management and Budget and the Secretary of Commerce—

(A) by the Director of the Office of Management and Budget, as appropriate, for application to the mission critical systems of all agencies; or

(B) by an agency head, as appropriate, for application to the mission critical systems of that agency.

(2) DEVELOPMENT OF MORE STRINGENT POLICIES, PRINCIPLES, STANDARDS, AND GUIDELINES.—To the extent that such policies are consistent with policies and guidance developed by the Director of the Office of Management and Budget and the Secretary of Commerce, an agency may develop and implement information security policies, principles, standards, and guidelines that provide more stringent protection than those required under section 3533 of title 44, United States Code (as added by section 1061 of this Act), or subsection (a) of this section.

(g) ATOMIC ENERGY ACT OF 1954.—Nothing in this subtitle (including any amendment made by this subtitle) shall supersede any requirement made by, or under, the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).