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# NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

MAY 21, 2003.—Ordered to be printed

Mr. HUNTER, from the Committee on Armed Services, submitted the following

## SUPPLEMENTAL REPORT

[To accompany H.R. 1588]

The supplemental report shows changes in existing law made by the bill (H.R. 1588), as reported. The material contained in this supplemental report was omitted in the report submitted on May 16, 2003 (H. Rept. 108–106).

### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT OF FISCAL YEAR 2003**

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# DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

# TITLE I—PROCUREMENT

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87–196

## Subtitle D—Air Force Programs

**SEC. 131. MULTIYEAR PROCUREMENT AUTHORITY FOR C–130J AIRCRAFT PROGRAM.**

(a) MULTIYEAR AUTHORITY.—Beginning with the fiscal year 2003 program year, the Secretary of the Air Force may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for procurement of up to [40 C-130J aircraft] *42 C–130J aircraft* in the CC–130J configuration and up to 24 C–130J aircraft in the KC–130J configuration. Notwithstanding subsection (k) of such section, such a contract may be for a period of six program years.

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# TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

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## Subtitle B—Program Requirements, Restrictions, and Limitations

**SEC. 211. RAH–66 COMANCHE AIRCRAFT PROGRAM.**

(a) REPORTS REQUIRED.—Not later than the end of each fiscal quarter of fiscal year 2003 *and fiscal year 2004*, 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 report on the progress of the restructured engineering and manufacturing development phase of the RAH–66 Comanche aircraft program.

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# TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

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## Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

**SEC. 811. LIMITATION PERIOD FOR TASK AND DELIVERY ORDER CONTRACTS.**

(a) * * *

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[(c) COMPTROLLER GENERAL REPORT.—Not later than March 15, 2003, the Comptroller General 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 contract periods (including any options or extensions) for all single and multiple contract awards entered into under section 2304a(d) of title 10, United States Code, before the effective date in subsection (b).]

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# DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

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# [TITLE XXXVI—ATOMIC ENERGY DEFENSE PROVISIONS

[Sec. 3601. Short title.

**[Subtitle A—[Reserved]**

**[Subtitle B—Department of Energy National Security Authorizations General Provisions**

[Sec. 3620. Definitions.
[Sec. 3621. Reprogramming.
[Sec. 3622. Minor construction projects.
[Sec. 3623. Limits on construction projects.
[Sec. 3624. Fund transfer authority.
[Sec. 3625. Conceptual and construction design.
[Sec. 3626. Authority for emergency planning, design, and construction activities.
[Sec. 3627. Scope of authority to carry out plant projects.
[Sec. 3628. Availability of funds.
[Sec. 3629. Transfer of defense environmental management funds.
[Sec. 3630. Transfer of weapons activities funds.
[Sec. 3631. Funds available for all national security programs of the Department of Energy.

**[SEC. 3601. SHORT TITLE.**

[This title may be cited as the "Atomic Energy Defense Act".

## [Subtitle A—[Reserved]

## [Subtitle B—Department of Energy National Security Authorizations General Provisions

**[SEC. 3620. DEFINITIONS.**

[In this subtitle:

[(1) The term "DOE national security authorization" means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.

[(2) The term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

[(3) The term "minor construction threshold" means $5,000,000.

**[SEC. 3621. REPROGRAMMING.**

[(a) IN GENERAL.—Except as provided in subsection (b) and in sections 3629 and 3630, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

[(1) in amounts that exceed, in a fiscal year—

[(A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or

[(B) $5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or

[(2) which has not been presented to, or requested of, Congress.

[(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

[(1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and

[(2) a period of 30 days has elapsed after the date on which such committees receive the report.

[(c) REPORT.—The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

[(d) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

[(e) LIMITATIONS.—

[(1) TOTAL AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

[(2) PROHIBITED ITEMS.—Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

**[SEC. 3622. MINOR CONSTRUCTION PROJECTS.**

[(a) AUTHORITY.—Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

[(b) ANNUAL REPORT.—The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

[(c) COST VARIATION REPORTS TO CONGRESSIONAL COMMITTEES.—If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised

cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

[(d) MINOR CONSTRUCTION PROJECT DEFINED.—In this section, the term "minor construction project" means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

**[SEC. 3623. LIMITS ON CONSTRUCTION PROJECTS.**

[(a) CONSTRUCTION COST CEILING.—Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

[(1) the amount authorized for the project; or

[(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

[(b) EXCEPTION WHERE NOTICE-AND-WAIT GIVEN.—An action described in subsection (a) may be taken if—

[(1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and

[(2) a period of 30 days has elapsed after the date on which the report is received by the committees.

[(c) COMPUTATION OF DAYS.—In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

[(d) EXCEPTION FOR MINOR PROJECTS.—Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

**[SEC. 3624. FUND TRANSFER AUTHORITY.**

[(a) TRANSFER TO OTHER FEDERAL AGENCIES.—The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

[(b) TRANSFER WITHIN DEPARTMENT OF ENERGY.—

[(1) TRANSFERS PERMITTED.—Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

[(2) MAXIMUM AMOUNTS.—Not more than 5 percent of any such authorization may be transferred to another authorization

under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

[(c) LIMITATIONS.—The authority provided by this subsection to transfer authorizations—

[(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and

[(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

[(d) NOTICE TO CONGRESS.—The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

**[SEC. 3625. CONCEPTUAL AND CONSTRUCTION DESIGN.**

[(a) CONCEPTUAL DESIGN.—

[(1) REQUIREMENT.—Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

[(2) REQUESTS FOR CONCEPTUAL DESIGN FUNDS.—If the estimated cost of completing a conceptual design for a construction project exceeds $3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

[(3) EXCEPTIONS.—The requirement in paragraph (1) does not apply to a request for funds—

[(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

[(B) for emergency planning, design, and construction activities under section 3626.

[(b) CONSTRUCTION DESIGN.—

[(1) AUTHORITY.—Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed $600,000.

[(2) LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN PROJECTS.—If the total estimated cost for construction design in connection with any construction project exceeds $600,000, funds for that design must be specifically authorized by law.

**[SEC. 3626. AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.**

[(a) AUTHORITY.—The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary,

must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

[(b) LIMITATION.—The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

[(c) SPECIFIC AUTHORITY.—The requirement of section 3625(b)(2) does not apply to emergency planning, design, and construction activities conducted under this section.

**[SEC. 3627. SCOPE OF AUTHORITY TO CARRY OUT PLANT PROJECTS.**

[In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

**[SEC. 3629. TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.**

[(a) TRANSFER AUTHORITY FOR DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

[(b) LIMITATIONS.—

[(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

[(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

[(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

[(A) to address a risk to health, safety, or the environment; or

[(B) to assure the most efficient use of defense environmental management funds at the field office.

[(4) IMPERMISSIBLE USES.—Funds transferred pursuant to subsection (a) 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.

[(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3621 shall not apply to transfers of funds pursuant to subsection (a).

[(d) NOTIFICATION.—The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

[(e) DEFINITIONS.—In this section:

[(1) The term "program or project" means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated.

[(2) The term "defense environmental management funds" means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.

**[SEC. 3630. TRANSFER OF WEAPONS ACTIVITIES FUNDS.**

[(a) TRANSFER AUTHORITY FOR WEAPONS ACTIVITIES FUNDS.—The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

[(b) LIMITATIONS.—

[(1) NUMBER OF TRANSFERS.—Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

[(2) AMOUNTS TRANSFERRED.—The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

[(3) DETERMINATION REQUIRED.—A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

[(A) is necessary to address a risk to health, safety, or the environment; or

[(B) will result in cost savings and efficiencies.

[(4) LIMITATION.—A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

[(5) IMPERMISSIBLE USES.—Funds transferred pursuant to subsection (a) 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.

[(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section 3621 shall not apply to transfers of funds pursuant to subsection (a).

[(d) NOTIFICATION.—The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

[(e) DEFINITIONS.—In this section:

[(1) The term "program or project" means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.

[(2) The term "weapons activities funds" means funds appropriated to the Department of Energy pursuant to an author-

ization for carrying out weapons activities necessary for national security programs.

**[SEC. 3631. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.**

[Subject to the provisions of appropriation Acts and section 3621, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.]

# *DIVISION D—ATOMIC ENERGY DEFENSE PROVISIONS*

**SEC. [3601.] *4001.* SHORT TITLE.**

This [title] *division* may be cited as the "Atomic Energy Defense Act".

***SEC. 4002. DEFINITION.***

*In this division, the term "congressional defense committees" means—*

*(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and*

*(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.*

# *TITLE XLI—ORGANIZATIONAL MATTERS*

***SEC. 4101. NAVAL NUCLEAR PROPULSION PROGRAM.***

*The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law.*

***SEC. 4102. MANAGEMENT STRUCTURE FOR NUCLEAR WEAPONS PRODUCTION FACILITIES AND NUCLEAR WEAPONS LABORATORIES.***

*(a) LIMITATION ON DELEGATION OF AUTHORITY.—(1) The Secretary of Energy, in carrying out national security programs, may delegate specific management and planning authority over matters relating to site operation of the facilities and laboratories covered by this section only to the Assistant Secretary of Energy for Defense Programs. Such Assistant Secretary may redelegate such authority only to managers of area offices of the Department of Energy located at such facilities and laboratories.*

*(2) Nothing in this section may be construed as affecting the delegation by the Secretary of Energy of authority relating to reporting, management, and oversight of matters relating to the Department of Energy generally, or safety, environment, and health at such facilities and laboratories.*

*(b) REQUIREMENT TO CONSULT WITH AREA OFFICES.—The Assistant Secretary of Energy for Defense Programs, in exercising any delegated authority to oversee management of matters relating to site operation of a facility or laboratory, shall exercise such authority only after direct consultation with the manager of the area office of the Department of Energy located at the facility or laboratory.*

*(c) REQUIREMENT FOR DIRECT COMMUNICATION FROM AREA OFFICES.—The Secretary of Energy, acting through the Assistant Secretary of Energy for Defense Programs, shall require the head of each area office of the Department of Energy located at each facility and laboratory covered by this section to report on matters relating to site operation other than those matters set forth in subsection (a)(2) directly to the Assistant Secretary of Energy for Defense Programs, without obtaining the approval or concurrence of any other official within the Department of Energy.*

*(d) DEFENSE PROGRAMS REORGANIZATION PLAN AND REPORT.—(1) The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy.*

*(2) Not later than January 21, 1997, the Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall specifically identify all significant functions performed by the operations offices relating to any of the facilities and laboratories covered by this section and which of those functions could be performed—*

*(A) by the area offices of the Department of Energy located at the facilities and laboratories covered by this section; or*

*(B) by the Assistant Secretary of Energy for Defense Programs.*

*(3) The report also shall address and make recommendations with respect to other internal streamlining and reorganization initiatives that the Department could pursue with respect to military or national security programs.*

*(e) DEFENSE PROGRAMS MANAGEMENT COUNCIL.—The Secretary of Energy shall establish a council to be known as the "Defense Programs Management Council". The Council shall advise the Secretary on policy matters, operational concerns, strategic planning, and development of priorities relating to the national security functions of the Department of Energy. The Council shall be composed of the directors of the facilities and laboratories covered by this section and shall report directly to the Assistant Secretary of Energy for Defense Programs.*

*(f) COVERED SITE OPERATIONS.—For purposes of this section, matters relating to site operation of a facility or laboratory include matters relating to personnel, budget, and procurement in national security programs.*

*(g) COVERED FACILITIES AND LABORATORIES.—This section applies to the following facilities and laboratories of the Department of Energy:*

*(1) The Kansas City Plant, Kansas City, Missouri.*

*(2) The Pantex Plant, Amarillo, Texas.*

*(3) The Y–12 Plant, Oak Ridge, Tennessee.*

*(4) The Savannah River Site, Aiken, South Carolina.*

*(5) Los Alamos National Laboratory, Los Alamos, New Mexico.*

*(6) Sandia National Laboratories, Albuquerque, New Mexico.*

*(7) Lawrence Livermore National Laboratory, Livermore, California.*

*(8) The Nevada Test Site, Nevada.*

***SEC. 4103. RESTRICTION ON LICENSING REQUIREMENT FOR CERTAIN DEFENSE ACTIVITIES AND FACILITIES.***

*None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.*

# *TITLE XLII—NUCLEAR WEAPONS STOCKPILE MATTERS*

## *Subtitle A—Stockpile Stewardship and Weapons Production*

***SEC. 4201. STOCKPILE STEWARDSHIP PROGRAM.***

*(a) ESTABLISHMENT.—The Secretary of Energy shall establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification.*

*(b) PROGRAM ELEMENTS.—The program shall include the following:*

*(1) An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the detonation of nuclear weapons.*

*(2) An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.*

*(3) Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the National Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.*

*(c) AUTHORIZATION OF APPROPRIATIONS.—Of funds authorized to be appropriated to the Secretary of Energy for fiscal year 1994 for weapons activities, $157,400,000 shall be available for the stewardship program established under subsection (a).*

***SEC. 4202. 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 National Security of the House of Rep-*

*resentatives 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. 4203. PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE.***

*(a) PLAN REQUIREMENT.—The Secretary of Energy shall develop and annually update a plan for maintaining the nuclear weapons stockpile. The plan shall cover, at a minimum, stockpile stewardship, stockpile management, and program direction and shall be consistent with the programmatic and technical requirements of the most recent annual Nuclear Weapons Stockpile Memorandum.*

*(b) PLAN ELEMENTS.—The plan and each update of the plan shall set forth the following:*

*(1) The number of warheads (including active and inactive warheads) for each warhead type in the nuclear weapons stockpile.*

*(2) The current age of each warhead type, and any plans for stockpile lifetime extensions and modifications or replacement of each warhead type.*

*(3) The process by which the Secretary of Energy is assessing the lifetime, and requirements for lifetime extension or replacement, of the nuclear and nonnuclear components of the warheads (including active and inactive warheads) in the nuclear weapons stockpile.*

*(4) The process used in recertifying the safety, security, and reliability of each warhead type in the nuclear weapons stockpile.*

*(5) Any concerns which would affect the ability of the Secretary of Energy to recertify the safety, security, or reliability of warheads in the nuclear weapons stockpile (including active and inactive warheads).*

*(c) ANNUAL SUBMISSION OF PLAN TO CONGRESS.—The Secretary of Energy shall submit to Congress the plan developed under subsection (a) not later than March 15, 1998, and shall submit an updated version of the plan not later than March 15 of each year thereafter. The plan shall be submitted in both classified and unclassified form.*

***SEC. 4204. 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 October 5, 1999.*

*(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.*

**SEC. [3141.] *4205.* ANNUAL ASSESSMENTS AND REPORTS TO THE PRESIDENT AND CONGRESS REGARDING THE CONDITION OF THE UNITED STATES NUCLEAR WEAPONS STOCKPILE.**

(a) * * *

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(d) REPORT ON ASSESSMENTS.—Not later than December 1 of each year, each official specified in subsection (b) shall submit to the Secretary concerned, and to the Nuclear Weapons Council, a report on the assessments that such official was required by subsection (a) to complete. The report shall include the following:

(1) * * *

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(3) In the case of a report submitted by the head of a national security laboratory—

(A) * * *

(B) a concise statement regarding the adequacy of the tools and methods employed by the manufacturing infrastructure required by [section 3137 of the National Defense Authorization Act for Fiscal Year 1996 (42 U.S.C. 2121 note)] *section 4212* to identify and fix any inadequacy with respect to the matters covered by the assessments; and

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***SEC. 4206. FORM OF CERTIFICATIONS REGARDING THE SAFETY OR RELIABILITY OF THE NUCLEAR WEAPONS STOCKPILE.***

*Any certification submitted to the President by the Secretary of Defense or the Secretary of Energy regarding confidence in the safety or reliability of a nuclear weapon type in the United States nuclear weapons stockpile shall be submitted in classified form only.*

***SEC. 4207. 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-stage 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 Verification 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 on "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 test-*

*ing 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 the Soviet Union.*

*(c) PURPOSES OF PROGRAM.—The purposes of the program under subsection (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.*

*(e) ANNUAL REPORT.—The Secretary of Energy shall submit to Congress each year an unclassified report (with a classified annex as necessary) that describes the progress made to the date of the report in achieving the purposes of the program required to be established under subsection (b).*

***SEC. 4208. STUDY ON NUCLEAR TEST READINESS POSTURES.***

*(a) REPORT.—Not later than February 15, 1996, the Secretary of Energy shall submit to Congress a report on the costs, programmatic issues, and other issues associated with sustaining the capability of the Department of Energy—*

*(1) to conduct an underground nuclear test 6 months after the date on which the President determines that such a test is necessary to ensure the national security of the United States;*

*(2) to conduct such a test 18 months after such date; and*

*(3) to conduct such a test 36 months after such date.*

*(b) BIENNIAL UPDATE REPORT.—(1) Not later than February 15 of each odd-numbered year, the Secretary shall submit to the congressional defense committees a report containing an update of the report required under subsection (a), as updated by any report previously submitted under this paragraph.*

*(2) Each report under paragraph (1) shall include, as of the date of such report, the following:*

*(A) A list and description of the workforce skills and capabilities that are essential to carry out underground nuclear tests at the Nevada Test Site.*

*(B) A list and description of the infrastructure and physical plant that are essential to carry out underground nuclear tests at the Nevada Test Site.*

*(C) A description of the readiness status of the skills and capabilities described in subparagraph (A) and of the infrastructure and physical plant described in subparagraph (B).*

*(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.*

**SEC. [3143.] *4209.* REQUIREMENTS FOR SPECIFIC REQUEST FOR NEW OR MODIFIED NUCLEAR WEAPONS.**

(a) REQUIREMENT FOR REQUEST FOR FUNDS FOR DEVELOPMENT.—(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code.

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***SEC. 4210. LIMITATION ON UNDERGROUND NUCLEAR WEAPONS TESTS.***

*No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.*

***SEC. 4211. TESTING OF NUCLEAR WEAPONS.***

*(a) IN GENERAL.—Of the funds authorized to be appropriated under section 3101(a)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) for the Department of Energy for fiscal year 1994 for weapons testing, $211,326,000 shall be available for infrastructure maintenance at the Nevada Test Site, and for maintaining the technical capability to resume underground nuclear testing at the Nevada Test Site.*

*(b) ATMOSPHERIC TESTING OF NUCLEAR WEAPONS.—None of the funds appropriated pursuant to the National Defense Authorization Act for Fiscal Year 1994 or any other Act for any fiscal year may be available to maintain the capability of the United States to conduct atmospheric testing of a nuclear weapon.*

***SEC. 4212. MANUFACTURING INFRASTRUCTURE FOR REFABRICATION AND CERTIFICATION OF NUCLEAR WEAPONS STOCKPILE.***

*(a) MANUFACTURING PROGRAM.—(1) The Secretary of Energy shall carry out a program for purposes of establishing within the Government a manufacturing infrastructure that has the capabilities of meeting the following objectives as specified in the Nuclear Posture Review:*

*(A) To provide a stockpile surveillance engineering base.*

*(B) To refabricate and certify weapon components and types in the enduring nuclear weapons stockpile, as necessary.*

*(C) To fabricate and certify new nuclear warheads, as necessary.*

*(D) To support nuclear weapons.*

*(E) To supply sufficient tritium in support of nuclear weapons to ensure an upload hedge in the event circumstances require.*

*(2) The purpose of the program carried out under paragraph (1) shall also be to develop manufacturing capabilities and capacities necessary to meet the requirements specified in the annual Nuclear Weapons Stockpile Review.*

*(b) REQUIRED CAPABILITIES.—The manufacturing infrastructure established under the program under subsection (a) shall include the following capabilities (modernized to attain the objectives referred to in that subsection):*

*(1) The weapons assembly capabilities of the Pantex Plant.*

*(2) The weapon secondary fabrication capabilities of the Y–12 Plant, Oak Ridge, Tennessee.*

*(3) The capabilities of the Savannah River Site relating to tritium recycling and fissile materials components processing and fabrication.*

*(4) The non-nuclear component capabilities of the Kansas City Plant.*

*(c) NUCLEAR POSTURE REVIEW.—For purposes of subsection (a), the term "Nuclear Posture Review" means the Department of Defense Nuclear Posture Review as contained in the Report of the Secretary of Defense to the President and the Congress dated February 19, 1995, or subsequent such reports.*

*(d) FUNDING.—Of the funds authorized to be appropriated under section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), $143,000,000 shall be available for carrying out the program required under this section, of which—*

*(1) $35,000,000 shall be available for activities at the Pantex Plant;*

*(2) $30,000,000 shall be available for activities at the Y–12 Plant, Oak Ridge, Tennessee;*

*(3) $35,000,000 shall be available for activities at the Savannah River Site; and*

*(4) $43,000,000 shall be available for activities at the Kansas City Plant.*

*(e) PLAN AND REPORT.—The Secretary shall develop a plan for the implementation of this section. Not later than March 1, 1996, the Secretary shall submit to Congress a report on the obligations the Secretary has incurred, and plans to incur, during fiscal year 1996 for the program referred to in subsection (a).*

***SEC. 4213. REPORTS ON CRITICAL DIFFICULTIES AT NUCLEAR WEAPONS LABORATORIES AND NUCLEAR WEAPONS PRODUCTION PLANTS.***

*(a) REPORTS BY HEADS OF LABORATORIES AND PLANTS.—In the event of a difficulty at a nuclear weapons laboratory or a nuclear weapons production plant that has a significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Assistant Secretary of Energy for Defense Programs a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.*

*(b) TRANSMITTAL BY ASSISTANT SECRETARY.—As soon as practicable after receipt of a report under subsection (a), the Assistant Secretary shall transmit the report (together with the comments of the Assistant Secretary) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.*

*(c) REPORTS BY NUCLEAR WEAPONS COUNCIL.—Section 179 of title 10, United States Code, is amended—*

*(1) by redesignating subsection (e) as subsection (f); and*

*(2) by inserting after subsection (d) the following new subsection (e):*

*"(e) In addition to the responsibilities set forth in subsection (d), the Council shall also submit to Congress a report on any analysis conducted by the Council with respect to difficulties at nuclear weapons laboratories or nuclear weapons production plants that have significant bearing on confidence in the safety or reliability of nuclear weapons or nuclear weapon types.".*

*(d) INCLUSION OF REPORTS IN ANNUAL STOCKPILE CERTIFICATION.—Any report submitted pursuant to subsection (a) shall also be included with the decision documents that accompany the annual certification of the safety and reliability of the United States nuclear weapons stockpile which is provided to the President for the year in which such report is submitted.*

*(e) DEFINITIONS.—In this section:*

*(1) The term "nuclear weapons laboratory" means the following:*

*(A) Lawrence Livermore National Laboratory, California.*

*(B) Los Alamos National Laboratory, New Mexico.*

*(C) Sandia National Laboratories.*

*(2) The term "nuclear weapons production plant" means 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.*

## *Subtitle B—Tritium*

***SEC. 4231. TRITIUM PRODUCTION PROGRAM.***

*(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons. In carrying out the tritium production program, the Secretary shall—*

*(1) complete the tritium supply and recycling environmental impact statement in preparation by the Secretary as of February 10, 1996; and*

*(2) assess alternative means for tritium production, including production through—*

*(A) types of new and existing reactors, including multipurpose reactors (such as advanced light water reactors and gas turbine gas-cooled reactors) capable of meeting both the tritium production requirements and the pluto-*

*nium disposition requirements of the United States for nuclear weapons;*

*(B) an accelerator; and*

*(C) multipurpose reactor projects carried out by the private sector and the Government.*

*(b) FUNDING.—Of funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), not more than $50,000,000 shall be available for the tritium production program established pursuant to subsection (a).*

*(c) LOCATION OF TRITIUM PRODUCTION FACILITY.—The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.*

*(d) COST-BENEFIT ANALYSIS.—(1) The Secretary shall include in the statements referred to in paragraph (2) a comparison of the costs and benefits of carrying out two projects for the separate performance of the tritium production mission of the Department and the plutonium disposition mission of the Department with the costs and benefits of carrying out one multipurpose project for the performance of both such missions.*

*(2) The statements referred to in paragraph (1) are—*

*(A) the environmental impact statement referred to in subsection (a)(1);*

*(B) the plutonium disposition environmental impact statement in preparation by the Secretary as of February 10, 1996; and*

*(C) assessments related to the environmental impact statements referred to in subparagraphs (A) and (B).*

*(e) REPORT.—Not later than 45 days after February 10, 1996, the Secretary 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 tritium production program established pursuant to subsection (a). The report shall include a specification of—*

*(1) the planned expenditures of the Department during fiscal year 1996 for any of the alternative means for tritium production assessed under subsection (a)(2);*

*(2) the amount of funds required to be expended by the Department, and the program milestones (including feasibility demonstrations) required to be met, during fiscal years 1997 through 2001 to ensure tritium production beginning not later than 2005 that is adequate to meet the tritium requirements of the United States for nuclear weapons; and*

*(3) the amount of such funds to be expended and such program milestones to be met during such fiscal years to ensure such tritium production beginning not later than 2011.*

*(f) TRITIUM TARGETS.—Of the funds made available pursuant to subsection (b), not more than $5,000,000 shall be available for the Idaho National Engineering Laboratory for the test and development of nuclear reactor tritium targets for the types of reactors assessed under subsection (a)(2)(A).*

***SEC. 4232. TRITIUM RECYCLING.***

*(a) IN GENERAL.—Except as provided in subsection (b), the following activities shall be carried out at the Savannah River Site, South Carolina:*

*(1) All tritium recycling for weapons, including tritium refitting.*

*(2) All activities regarding tritium formerly carried out at the Mound Plant, Ohio.*

*(b) EXCEPTION.—The following activities may be carried out at the Los Alamos National Laboratory, New Mexico:*

*(1) Research on tritium.*

*(2) Work on tritium in support of the defense inertial confinement fusion program.*

*(3) Provision of technical assistance to the Savannah River Site regarding the weapons surveillance program.*

***SEC. 4233. TRITIUM PRODUCTION.***

*(a) NEW TRITIUM PRODUCTION FACILITY.—The Secretary of Energy shall commence planning and design activities and infrastructure development for a new tritium production facility.*

*(b) IN-REACTOR TESTS.—The Secretary may perform in-reactor tests of tritium target rods as part of the activities carried out under the commercial light water reactor program.*

***SEC. 4234. MODERNIZATION AND CONSOLIDATION OF TRITIUM RECYCLING FACILITIES.***

*(a) IN GENERAL.—The Secretary of Energy shall carry out activities at the Savannah River Site, South Carolina, to—*

*(1) modernize and consolidate the facilities for recycling tritium from weapons; and*

*(2) provide a modern tritium extraction facility so as to ensure that such facilities have a capacity to recycle tritium from weapons that is adequate to meet the requirements for tritium for weapons specified in the Nuclear Weapons Stockpile Memorandum.*

*(b) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201), not more than $9,000,000 shall be available for activities under subsection (a).*

***SEC. 4235. PROCEDURES FOR MEETING TRITIUM PRODUCTION REQUIREMENTS.***

*(a) PRODUCTION OF NEW TRITIUM.—The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.*

*(b) SUPPORT.—To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.*

*(c) DESIGN AND ENGINEERING DEVELOPMENT.—The Secretary shall—*

*(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and*

*(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.*

# *TITLE XLIII—PROLIFERATION MATTERS*

***SEC. 4301. INTERNATIONAL COOPERATIVE STOCKPILE STEWARDSHIP.***

*(a) FUNDING PROHIBITION.—No funds authorized to be appropriated or otherwise available to the Department of Energy for any fiscal year may be obligated or expended to conduct any activities associated with international cooperative stockpile stewardship.*

*(b) EXCEPTIONS.—Subsection (a) does not apply to the following:*

*(1) Activities conducted between the United States and the United Kingdom.*

*(2) Activities conducted between the United States and France.*

*(3) Activities carried out under title XIV of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) relating to cooperative threat reduction with states of the former Soviet Union.*

***SEC. 4302. NONPROLIFERATION INITIATIVES AND ACTIVITIES.***

*(a) INITIATIVE FOR PROLIFERATION PREVENTION PROGRAM.—(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.*

*(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—*

*(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or*

*(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.*

*(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—*

*(i) is currently involved in activities described in subparagraph (A)(i); or*

*(ii) was not formerly involved in activities described in subparagraph (A)(ii).*

*(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.*

*(B) For purposes of this paragraph, the term "country of proliferation concern" means any country so designated by the Director*

*of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program.*

*(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:*

*(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes.*

*(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.*

*(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.*

*(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.*

*(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.*

*(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.*

*(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall—*

*(A) after such payment, submit a report to the congressional defense committees explaining the particular circumstances making such payment under the Initiatives for Proliferation Prevention program with such funds unavoidable; and*

*(B) ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program to offset the amount of such payment.*

*(b) NUCLEAR CITIES INITIATIVE.—(1) No amounts authorized to be appropriated by title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.*

*(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.*

*(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding*

*whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.*

*(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.*

*(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of the United States Government that participates in or contributes to the initiative. The report shall describe separately any interagency participation in or contribution to the initiative.*

*(c) REPORT.—(1) 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 on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.*

*(2) The report shall include the following:*

*(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the case may be, and means for measuring the achievement of such objectives.*

*(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.*

*(C) A list of the institutes and scientists associated with weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—*

*(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and*

*(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative.*

*(d) NUCLEAR CITIES INITIATIVE DEFINED.—For purposes of this section, the term "Nuclear Cities Initiative" means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.*

***SEC. 4303. ANNUAL REPORT ON STATUS OF NUCLEAR MATERIALS PROTECTION, CONTROL, AND ACCOUNTING PROGRAM.***

*(a) REPORT REQUIRED.—Not later than January 1 of each year, 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 status of efforts during the preceding fiscal year under the Nuclear Materials Protection, Control, and Accounting Program of the Department of Energy to secure weapons-usable nuclear materials in Russia that have been identified as being at risk for theft or diversion.*

*(b) CONTENTS.—Each report under subsection (a) shall include the following:*

*(1) The number of buildings, including building locations, that received complete and integrated materials protection, control, and accounting systems for nuclear materials described in subsection (a) during the year covered by such report.*

*(2) The amounts of highly enriched uranium and plutonium in Russia that have been secured under systems described in paragraph (1) as of the date of such report.*

*(3) The amount of nuclear materials described in subsection (a) that continues to require securing under systems described in paragraph (1) as of the date of such report.*

*(4) A plan for actions to secure the nuclear materials identified in paragraph (3) under systems described in paragraph (1), including an estimate of the cost of such actions.*

*(5) The amounts expended through the fiscal year preceding the date of such report to secure nuclear materials described in subsection (a) under systems described in paragraph (1), set forth by total amount and by amount per fiscal year.*

*(c) LIMITATION ON USE OF CERTAIN FUNDS.—(1) No amounts authorized to be appropriated for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act for purposes of the Nuclear Materials Protection, Control, and Accounting Program may be obligated or expended after September 30, 2000, for any project under the program at a site controlled by the Russian Ministry of Atomic Energy (MINATOM) in Russia until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the access policy established with respect to such project, including a certification that the access policy has been implemented.*

*(2) The access policy with respect to a project under this subsection shall—*

*(A) permit appropriate determinations by United States officials regarding security requirements, including security upgrades, for the project; and*

*(B) ensure verification by United States officials that Department of Energy assistance at the project is being used for the purposes intended.*

***SEC. 4304. NUCLEAR CITIES INITIATIVE.***

*(a) IN GENERAL.—(1) The Secretary of Energy may, in accordance with the provisions of this section, expand and enhance the activities of the Department of Energy under the Nuclear Cities Initiative.*

*(2) In this section, the term "Nuclear Cities Initiative" means the initiative arising pursuant to the joint statement dated July 24, 1998, signed by the Vice President of the United States and the Prime Minister of the Russian Federation and the agreement dated*

*September 22, 1998, between the United States and the Russian Federation.*

*(b) FUNDING FOR FISCAL YEAR 2001.—There is hereby authorized to be appropriated for the Department of Energy for fiscal year 2001 $30,000,000 for purposes of the Nuclear Cities Initiative.*

*(c) LIMITATION PENDING SUBMISSION OF AGREEMENT.—No amount authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended to provide assistance under the Initiative for more than three nuclear cities in Russia and two serial production facilities in Russia until 30 days after the date on which the Secretary of Energy 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 Government and the Government of the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work.*

*(d) LIMITATION PENDING IMPLEMENTATION OF PROJECT REVIEW PROCEDURES.—(1) Not more than $8,750,000 of the amounts referred to in subsection (b) may be obligated or expended for purposes of the Initiative until the Secretary of Energy establishes and implements project review procedures for projects under the Initiative and submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the project review procedures so established and implemented.*

*(2) The project review procedures established under paragraph (1) shall ensure that any scientific, technical, or commercial project initiated under the Initiative—*

*(A) will not enhance the military or weapons of mass destruction capabilities of Russia;*

*(B) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;*

*(C) will be commercially viable; and*

*(D) will be carried out in conjunction with an appropriate commercial, industrial, or nonprofit entity as partner.*

*(e) LIMITATION PENDING CERTIFICATION AND REPORT.—No amount in excess of $17,500,000 authorized to be appropriated for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended for purposes of providing assistance under the Initiative until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:*

*(1) A copy of the written agreement between the United States and the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work within five years of the date of the agreement in exchange for receiving assistance through the Initiative.*

*(2) A certification by the Secretary—*

*(A) that project review procedures for all projects under the Initiative have been established and are being implemented; and*

*(B) that those procedures will ensure that any scientific, technical, or commercial project initiated under the Initiative—*

*(i) will not enhance the military or weapons of mass destruction capabilities of Russia;*

*(ii) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;*

*(iii) will be commercially viable within three years after the date of the initiation of the project; and*

*(iv) will be carried out in conjunction with an appropriate commercial, industrial, or other nonprofit entity as partner.*

*(3) A report setting forth the following:*

*(A) A description of the project review procedures process.*

*(B) A list of the projects under the Initiative that have been reviewed under such project review procedures.*

*(C) A description for each project listed under subparagraph (B) of the purpose, expected life-cycle costs, out-year budget costs, participants, commercial viability, expected time for income generation, and number of Russian jobs created.*

*(f) PLAN FOR RESTRUCTURING THE RUSSIAN NUCLEAR COMPLEX.—(1) The President, acting through the Secretary of Energy, is urged to enter into discussions with the Russian Federation for purposes of the development by the Russian Federation of a plan to restructure the Russian nuclear complex in order to meet changes in the national security requirements of Russia by 2010.*

*(2) The plan under paragraph (1) should include the following:*

*(A) Mechanisms to consolidate the nuclear weapons production capacity in Russia to a capacity that is consistent with the obligations of Russia under current and future arms control agreements.*

*(B) Mechanisms to increase transparency regarding the restructuring of the Russian nuclear complex and weapons-surplus nuclear materials inventories in Russia to the levels of transparency for such matters in the United States, including the participation of Department of Energy officials with expertise in transparency of such matters.*

*(C) Measurable milestones that will permit the United States and the Russian Federation to monitor progress under the plan.*

*(g) ENCOURAGEMENT OF CAREERS IN NONPROLIFERATION.—(1) In carrying out actions under this section, the Secretary of Energy may carry out a program to encourage students in the United States and in the Russian Federation to pursue careers in areas relating to nonproliferation.*

*(2) Of the amounts made available under the Initiative for fiscal year 2001 in excess of $17,500,000, up to $2,000,000 shall be available for purposes of the program under paragraph (1).*

*(3) The Administrator for Nuclear Security shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives before any funds are expended pursuant to paragraph (2). Any such notification shall include—*

*(A) an identification of the amount to be expended under paragraph (2) during fiscal year 2001;*

*(B) the recipients of the funds; and*

*(C) specific information on the activities that will be conducted using those funds.*

*(h) DEFINITIONS.—In this section:*

*(1) The term "nuclear city" means any of the closed nuclear cities within the complex of the Russian Ministry of Atomic Energy as follows:*

*(A) Sarov (Arzamas–16).*

*(B) Zarechnyy (Penza–19).*

*(C) Novoural'sk (Sverdlovsk–44).*

*(D) Lesnoy (Sverdlovsk–45).*

*(E) Ozersk (Chelyabinsk–65).*

*(F) Snezhinsk (Chelyabinsk–70).*

*(G) Trechgornyy (Zlatoust–36).*

*(H) Seversk (Tomsk–7).*

*(I) Zheleznogorsk (Krasnoyarsk–26).*

*(J) Zelenogorsk (Krasnoyarsk–45).*

*(2) The term "Russian nuclear complex" means all of the nuclear cities.*

*(3) The term "serial production facilities" means the facilities in Russia that are located at the following cities:*

*(A) Avangard.*

*(B) Lesnoy (Sverdlovsk–45).*

*(C) Trechgornyy (Zlatoust–36).*

*(D) Zarechnyy (Penza–19).*

***SEC. 4305. AUTHORITY TO CONDUCT PROGRAM RELATING TO FISSILE MATERIALS.***

*The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.*

# *TITLE XLIV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS*

## *Subtitle A—Environmental Restoration and Waste Management*

***SEC. 4401. 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.*

***SEC. 4402. REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAM.***

*(a) AUTHORITY TO DEVELOP FUTURE USE PLANS.—The Secretary of Energy may develop future use plans for any defense nuclear facility at which environmental restoration and waste management activities are occurring.*

*(b) REQUIREMENT TO DEVELOP FUTURE USE PLANS.—The Secretary shall develop a future use plan for each of the following defense nuclear facilities:*

*(1) Hanford Site, Richland, Washington.*

*(2) Rocky Flats Plant, Golden, Colorado.*

*(3) Savannah River Site, Aiken, South Carolina.*

*(4) Idaho National Engineering Laboratory, Idaho.*

*(c) CITIZEN ADVISORY BOARD.—(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.*

*(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.*

*(d) REQUIREMENT TO CONSULT WITH CITIZEN ADVISORY BOARD.—In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to subsection (c) or a similar advisory board already in existence as of September 23, 1996, for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.*

*(e) 50-YEAR PLANNING PERIOD.—A future use plan developed under this section shall cover a period of at least 50 years.*

*(f) DEADLINES.—For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.*

*(g) REPORT.—Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.*

*(h) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modifica-*

*tion to a future use plan with respect to a defense nuclear facility that was developed before September 23, 1996.*

*(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. 4403. INTEGRATED FISSILE MATERIALS MANAGEMENT PLAN.***

*(a) PLAN.—The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—*

*(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to achieve budgetary and other efficiencies in the discharge of those responsibilities; and*

*(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.*

*(b) SUBMITTAL TO CONGRESS.—The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.*

***SEC. 4404. 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; and*

*(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; and*

*(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment.*

*(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.*

***SEC. 4405. ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES.***

*(a) ACCELERATED CLEANUP.—The Secretary of Energy shall accelerate the schedule for environmental restoration and waste management activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.*

*(b) CONSIDERATION OF FACTORS.—In making a determination under subsection (a), the Secretary shall consider the following:*

*(1) The cost savings achievable by the Federal Government.*

*(2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 4404 of this Act.*

*(3) The potential for reuse of the site.*

*(4) The risks that the site poses to local health and safety.*

*(5) The proximity of the site to populated areas.*

*(c) REPORT.—Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).*

*(d) SAVINGS PROVISION.—Nothing in this section may be construed to affect a specific statutory requirement for a specific envi-*

*ronmental 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.*

***SEC. 4406. 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 institution 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 de-*

*fense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.*

***SEC. 4407. 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.*

***SEC. 4408. PUBLIC PARTICIPATION IN PLANNING FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT AT DEFENSE NUCLEAR FACILITIES.***

*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 any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.*

## *Subtitle B—Closure of Facilities*

***SEC. 4421. 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 September 23, 2011.*

*(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.*

***SEC. 4422. REPORTS IN CONNECTION WITH PERMANENT CLOSURES OF DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES.***

*(a) TRAINING AND JOB PLACEMENT SERVICES PLAN.—Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the environmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.*

*(b) CLOSURE REPORT.—Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility,*

*the Secretary of Energy shall submit to Congress a report containing—*

*(1) a complete survey of environmental problems at the facility;*

*(2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and*

*(3) a discussion of the proposed cleanup schedule.*

## *Subtitle C—Privatization*

***SEC. 4431. DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION PROJECTS.***

*(a) AUTHORITY TO ENTER INTO CONTRACTS.—The Secretary of Energy may, using funds authorized to be appropriated by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) for a project referred to in that section, enter into a contract that—*

*(1) is awarded on a competitive basis;*

*(2) requires the contractor to construct or acquire any equipment or facilities required to carry out the contract;*

*(3) requires the contractor to bear any of the costs of the construction, acquisition, and operation of such equipment or facilities that arise before the commencement of the provision of goods or services under the contract; and*

*(4) provides for payment to the contractor under the contract only upon the meeting of performance specifications in the contract.*

*(b) NOTICE AND WAIT.—(1) The Secretary may not enter into a contract under subsection (a), exercise an authorization to proceed with such a contract or extend any contract period for such a contract by more than one year until 30 days after the date on which the Secretary submits to the congressional defense committees a report with respect to the contract.*

*(2) Except as provided in paragraph (3), a report under paragraph (1) with respect to a contract shall set forth—*

*(A) the anticipated costs and fees of the Department under the contract, including the anticipated maximum amount of such costs and fees;*

*(B) any performance specifications in the contract;*

*(C) the anticipated dates of commencement and completion of the provision of goods or services under the contract;*

*(D) the allocation between the Department and the contractor of any financial, regulatory, or environmental obligations under the contract;*

*(E) any activities planned or anticipated to be required with respect to the project after completion of the contract;*

*(F) the site services or other support to be provided the contractor by the Department under the contract;*

*(G) the goods or services to be provided by the Department or contractor under the contract, including any additional obligations to be borne by the Department or contractor with respect to such goods or services;*

*(H) if the contract provides for financing of the project by an entity or entities other than the United States, a detailed*

*comparison of the costs of financing the project through such entity or entities with the costs of financing the project by the United States;*

*(I) the schedule for the contract;*

*(J) the costs the Department would otherwise have incurred in obtaining the goods or services covered by the contract if the Department had not proposed to obtain the goods or services under this section;*

*(K) an estimate and justification of the cost savings, if any, to be realized through the contract, including the assumptions underlying the estimate;*

*(L) the effect of the contract on any ancillary schedules applicable to the facility concerned, including milestones in site compliance agreements; and*

*(M) the plans for maintaining financial and programmatic accountability for activities under the contract.*

*(3) In the case of a contract under subsection (a) at the Hanford Reservation, the report under paragraph (1) shall set forth—*

*(A) the matters specified in paragraph (2); and*

*(B) if the contract contemplates two pilot vitrification plants—*

*(i) an analysis of the basis for the selection of each of the plants in lieu of a single pilot vitrification plant; and*

*(ii) a detailed comparison of the costs to the United States of two pilot plants with the costs to the United States of a single pilot plant.*

*(c) COST VARIATIONS.—(1)(A) The Secretary may not enter into a contract for a project referred to in subparagraph (B), or obligate funds attributable to the capital portion of the cost of such a contract, whenever the current estimated cost of the project exceeds the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.*

*(B) Subparagraph (A) applies to the following:*

*(i) A project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85).*

*(ii) A project authorized by section 3103 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2824) for which a contract has not been entered into as of November 18, 1997.*

*(2) The Secretary may not obligate funds attributable to the capital portion of the cost of a contract entered into before such date for a project authorized by such section 3103 whenever the current estimated cost of the project equals or exceeds 110 percent of the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.*

*(d) USE OF FUNDS FOR TERMINATION OF CONTRACT.—Not later than 15 days before the Secretary obligates funds available for a project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to terminate the contract for the project under subsection (a), the Secretary shall notify the congressional defense committees of the Secretary's intent to obligate the funds for that purpose.*

*(e) ANNUAL REPORT ON CONTRACTS.—(1) Not later than February 28 of each year, the Secretary shall submit to the congres-*

*sional defense committees a report on the activities, if any, carried out under each contract referred to in paragraph (2) during the preceding year. The report shall include an update with respect to each such contract of the matters specified under subsection (b)(1) as of the date of the report.*

*(2) A contract referred to in paragraph (1) is the following:*

*(A) A contract under subsection (a) for a project referred to in that subsection.*

*(B) A contract under section 3103 of the National Defense Authorization Act for Fiscal Year 1997.*

*(f) ASSESSMENT OF CONTRACTING WITHOUT SUFFICIENT APPROPRIATIONS.—Not later than 90 days after November 18, 1997, the Secretary shall submit to the congressional defense committees a report assessing whether, and under what circumstances, the Secretary could enter into contracts for defense environmental management privatization projects in the absence of sufficient appropriations to meet obligations under such contracts without thereby violating the provisions of section 1341 of title 31, United States Code.*

# *TITLE XLV—SAFEGUARDS AND SECURITY MATTERS*

## *Subtitle A—Safeguards and Security*

### *SEC. 4501. PROHIBITION ON INTERNATIONAL INSPECTIONS OF DEPARTMENT OF ENERGY FACILITIES UNLESS PROTECTION OF RESTRICTED DATA IS CERTIFIED.*

*(a) PROHIBITION ON INSPECTIONS.—The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.*

*(b) EXTENSION OF NOTICE-AND-WAIT REQUIREMENT REGARDING PROPOSED COOPERATION AGREEMENTS.—Section 3155(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 3092) is amended by striking out "December 31, 1995" and inserting in lieu thereof "October 1, 1996".*

*(c) RESTRICTED DATA DEFINED.—In this section, the term "restricted data" has the meaning provided by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

### *SEC. 4502. RESTRICTIONS ON ACCESS TO NATIONAL LABORATORIES BY FOREIGN VISITORS FROM SENSITIVE COUNTRIES.*

*(a) BACKGROUND REVIEW REQUIRED.—The Secretary of Energy may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.*

*(b) MORATORIUM PENDING CERTIFICATION.—(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.*

*(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:*

*(A) January 3, 2000.*

*(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).*

*(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, of each of the following:*

*(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.*

*(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.*

*(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.*

*(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.*

*(c) WAIVER OF MORATORIUM.—(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of individuals whose admission to a national laboratory is determined by the Secretary to be in the interest of the national security of the United States.*

*(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to 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.*

*(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:*

*(A) A detailed justification for the waiver.*

*(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.*

*(C) The Secretary's certification that the admission of that individual or delegation to a national laboratory is in the interest of the national security of the United States.*

*(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.*

*(d) EXCEPTION TO MORATORIUM FOR CERTAIN INDIVIDUALS.—The moratorium under subsection (b) shall not apply to any person who—*

*(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and*

*(2) has undergone a background review in accordance with subsection (a).*

*(e) EXCEPTION TO MORATORIUM FOR CERTAIN PROGRAMS.—The moratorium under subsection (b) shall not apply—*

*(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or*

*(2) to the materials protection control and accounting program of the Department.*

*(f) SENSE OF CONGRESS REGARDING BACKGROUND REVIEWS.—It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.*

*(g) DEFINITIONS.—For purposes of this section:*

*(1) The term "background review", commonly known as an indices check, means a review of information provided by the Director of Central Intelligence and the Director of the Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.*

*(2) The term "sensitive countries list" means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.*

*(3) The term "national laboratory" means any of the following:*

*(A) Lawrence Livermore National Laboratory, Livermore, California.*

*(B) Los Alamos National Laboratory, Los Alamos, New Mexico.*

*(C) Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.*

*(4) The term "Restricted Data" has the meaning given that term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

***SEC. 4503. BACKGROUND INVESTIGATIONS OF CERTAIN PERSONNEL AT DEPARTMENT OF ENERGY FACILITIES.***

*(a) IN GENERAL.—The Secretary of Energy shall ensure that an investigation meeting the requirements of section 145 of the Atomic Energy Act of 1954 (42 U.S.C. 2165) is made for each Department of Energy employee, or contractor employee, at a national laboratory or nuclear weapons production facility who—*

*(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or*

*(2) has or may have regular access to a location where Restricted Data is present.*

*(b) COMPLIANCE.—The Secretary shall have 15 months from October 5, 1999, to meet the requirement in subsection (a).*

*(c) DEFINITIONS.—In this section, the terms "national laboratory" and "Restricted Data" have the meanings given such terms in section 4502(g)).*

***SEC. 4504. DEPARTMENT OF ENERGY COUNTERINTELLIGENCE POLYGRAPH PROGRAM.***

*(a) NEW COUNTERINTELLIGENCE POLYGRAPH PROGRAM REQUIRED.—The Secretary of Energy shall carry out, under regulations prescribed under this section, a new counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.*

*(b) AUTHORITIES AND LIMITATIONS.—(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).*

*(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.*

*(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rulemaking for the new program.*

*(c) REPEAL OF EXISTING POLYGRAPH PROGRAM.—Effective 30 days after the Secretary submits to the congressional defense committees the Secretary's certification that the final rule for the new counterintelligence polygraph program required by subsection (a) has been fully implemented, section 4504A is repealed.*

*(d) REPORT ON FURTHER ENHANCEMENT OF PERSONNEL SECURITY PROGRAM.—(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.*

*(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.*

*(e) POLYGRAPH REVIEW DEFINED.—In this section, the term "Polygraph Review" means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.*

***SEC. 4504A. 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, un-*

*less 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 April 5, 2000, 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.*

***SEC. 4505. NOTICE TO CONGRESSIONAL COMMITTEES OF CERTAIN SECURITY AND COUNTERINTELLIGENCE FAILURES WITHIN NUCLEAR ENERGY DEFENSE PROGRAMS.***

*(a) REQUIRED NOTIFICATION.—The Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each significant nuclear defense intelligence loss. Any such notification shall be provided only after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.*

*(b) SIGNIFICANT NUCLEAR DEFENSE INTELLIGENCE LOSSES.—In this section, the term "significant nuclear defense intelligence loss" means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.*

*(c) MANNER OF NOTIFICATION.—Notification of a significant nuclear defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.*

*(d) PROCEDURES.—The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.*

*(e) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.*

*(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413) for the President to ensure that the congressional intelligence committees*

*are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.*

***SEC. 4506. SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES.***

*(a) IN GENERAL.—Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees the report entitled "Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities", or any successor report to such report.*

*(b) REQUIREMENT RELATING TO REPORTS THROUGH FISCAL YEAR 2000.—The Secretary shall include with each report submitted under subsection (a) in fiscal years 1998 through 2000 any comments on such report by the members of the Department of Energy Security Management Board established under section 3161 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2048; 42 U.S.C. 7251 note) that such members consider appropriate.*

***SEC. 4507. REPORT ON COUNTERINTELLIGENCE AND SECURITY PRACTICES AT NATIONAL LABORATORIES.***

*(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).*

*(b) CONTENT OF REPORT.—The report shall include, with respect to each national laboratory, the following:*

*(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.*

*(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.*

*(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.*

*(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).*

*(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.*

*(c) NATIONAL LABORATORY DEFINED.—In this section, the term "national laboratory" has the meaning given that term in section 4502(g)(3).*

***SEC. 4508. REPORT ON SECURITY VULNERABILITIES OF NATIONAL LABORATORY COMPUTERS.***

*(a) REPORT REQUIRED.—Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.*

*(b) PREPARATION OF REPORT.—In preparing the report, the National Counterintelligence Policy Board shall establish a so-called*

*"red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.*

*(c) SUBMISSION OF REPORT TO SECRETARY OF ENERGY AND TO FBI DIRECTOR.—Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.*

*(d) FORWARDING TO CONGRESSIONAL COMMITTEES.—Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:*

*(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.*

*(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.*

*(e) FIRST REPORT.—The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.*

*(f) NATIONAL LABORATORY DEFINED.—In this section, the term "national laboratory" has the meaning given that term in section 4502(g)(3).*

## *Subtitle B—Classified Information*

### *SEC. 4521. REVIEW OF CERTAIN DOCUMENTS BEFORE DECLASSIFICATION AND RELEASE.*

*(a) IN GENERAL.—The Secretary of Energy shall ensure that, before a document of the Department of Energy that contains national security information is released or declassified, such document is reviewed to determine whether it contains restricted data.*

*(b) LIMITATION ON DECLASSIFICATION.—The Secretary may not implement the automatic declassification provisions of Executive Order 12958 if the Secretary determines that such implementation could result in the automatic declassification and release of documents containing restricted data.*

*(c) RESTRICTED DATA DEFINED.—In this section, the term "restricted data" has the meaning provided by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

### *SEC. 4522. PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.*

*(a) PLAN FOR PROTECTION AGAINST RELEASE.—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in con-*

*sultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 12958 (50 U.S.C. 435 note).*

*(b) PLAN ELEMENTS.—The plan under subsection (a) shall include the following:*

*(1) The actions to be taken in order to ensure that records subject to Executive Order No. 12958 are reviewed on a page-by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.*

*(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.*

*(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.*

*(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.*

*(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.*

*(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.*

*(7) The funding, personnel, and other resources required to carry out the plan.*

*(8) A timetable for implementation of the plan.*

*(c) LIMITATION ON DECLASSIFICATION OF CERTAIN RECORDS.—(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.*

*(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.*

*(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified in the plan pursuant to subsection (b)(1), to be a record that is highly unlikely to contain Restricted Data or Formerly Restricted Data.*

*(d) SUBMISSION OF PLAN.—The Secretary of Energy shall submit the plan required under subsection (a) to the following:*

*(1) The Committee on Armed Services of the Senate.*

*(2) The Committee on Armed Services of the House of Representatives.*

*(3) The Assistant to the President for National Security Affairs.*

*(e) SUBMISSION OF REVIEWS.—The Secretary of Energy shall, on a periodic basis, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to subsection (b)(4) to the committees and Assistant to the President specified in subsection (d).*

*(f) REPORT AND NOTIFICATION REGARDING INADVERTENT RELEASES.—(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.*

*(2) Commencing with inadvertent releases discovered on or after October 30, 2000, the Secretary of Energy shall, on a quarterly basis, submit a report to the committees and Assistant to the President specified in subsection (d). The report shall state whether any inadvertent releases described in paragraph (1) occurred during the immediately preceding quarter and, if so, shall identify each such release.*

*(g) DEFINITION.—In this section, the term "Restricted Data" has the meaning given that term in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

***SEC. 4523. SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.***

*(a) SUPPLEMENT TO PLAN.—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 3161 of the Strom Thurmond National Defense Authorization Act for Fisclay Year 1999 (Public Law 105–261; 112 Stat. 2260; 50 U.S.C. 435 note).*

*(b) CONTENTS OF SUPPLEMENT.—The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 4522) to all records subject to Executive Order No. 12958 that were determined before October 17, 1998, to be suitable for declassification.*

*(c) LIMITATION ON DECLASSIFICATION OF RECORDS.—All records referred to in subsection (b) shall be treated, for purposes of subsection (c) of section 4522, in the same manner as records referred to in subsection (a) of such section.*

*(d) SUBMISSION OF SUPPLEMENT.—The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in subsection (d) of section 4522.*

***SEC. 4524. PROTECTION OF CLASSIFIED INFORMATION DURING LABORATORY-TO-LABORATORY EXCHANGES.***

*(a) PROVISION OF TRAINING.—The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.*

*(b) COUNTERING OF ESPIONAGE AND INTELLIGENCE-GATHERING ABROAD.—(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Department contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.*

*(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.*

***SEC. 4525. IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES.***

*(a) AMOUNTS FOR DECLASSIFICATION OF RECORDS.—The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.*

*(b) CERTIFICATION REQUIRED WITH RESPECT TO AUTOMATIC DECLASSIFICATION OF RECORDS.—No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.*

*(c) REPORT ON AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF ENERGY RECORDS.—Not later than February 1, 2001, the Secretary of Energy 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 efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:*

*(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.*

*(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.*

*(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.*

## *Subtitle C—Emergency Response*

***SEC. 4541. RESPONSIBILITY FOR DEFENSE PROGRAMS EMERGENCY RESPONSE PROGRAM.***

*The Office of Military Applications under the Assistant Secretary of Energy for Defense Programs shall retain responsibility for the Defense Programs Emergency Response Program within the Department of Energy.*

# *TITLE XLVI—PERSONNEL MATTERS*

## *Subtitle A—Personnel Management*

***SEC. 4601. AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.***

*(a) AUTHORITY.—(1) Notwithstanding any provision of title 5, United States Code, governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—*

*(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and*

*(B) appoint persons to such positions.*

*(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.*

*(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.*

*(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.*

*(b) OPM REVIEW.—(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5, United States Code.*

*(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5, United States Code, or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.*

*(3) Upon receipt of a notification under paragraph (2), the Secretary shall—*

*(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the*

*qualifications and experience of the persons appointed and the duties of the positions involved; or*

*(B) cease appointment of persons under such authority.*

*(c) TERMINATION.—(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2002.*

*(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).*

***SEC. 4602. WHISTLEBLOWER PROTECTION PROGRAM.***

*(a) PROGRAM REQUIRED.—The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.*

*(b) COVERED INDIVIDUALS.—For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.*

*(c) PROTECTED DISCLOSURES.—For purposes of this section, a protected disclosure is a disclosure—*

*(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;*

*(2) made to a person or entity specified in subsection (d); and*

*(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:*

*(A) A violation of law or Federal regulation.*

*(B) Gross mismanagement, a gross waste of funds, or abuse of authority.*

*(C) A false statement to Congress on an issue of material fact.*

*(d) PERSONS AND ENTITIES TO WHICH DISCLOSURES MAY BE MADE.—A person or entity specified in this subsection is any of the following:*

*(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.*

*(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.*

*(3) The Inspector General of the Department of Energy.*

*(4) The Federal Bureau of Investigation.*

*(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.*

*(e) OFFICIAL CAPACITY OF PERSONS TO WHOM INFORMATION IS DISCLOSED.—A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.*

*(f) ASSISTANCE AND GUIDANCE.—The Secretary, acting through the Inspector General of the Department of Energy, shall provide as-*

*sistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:*

*(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.*

*(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.*

*(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.*

*(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.*

*(g) REGULATIONS.—The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.*

*(h) NOTIFICATION TO COVERED INDIVIDUALS.—The Secretary shall notify each covered individual of the following:*

*(1) The rights of that individual under this section.*

*(2) The assistance and guidance provided under this section.*

*(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.*

*(i) COMPLAINT BY COVERED INDIVIDUALS.—If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.*

*(j) INVESTIGATION BY OFFICE OF HEARINGS AND APPEALS.—(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—*

*(A) determine whether or not the complaint is frivolous; and*

*(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.*

*(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—*

*(A) the individual who submitted the complaint on which the investigation is based;*

*(B) the contractor concerned, if any; and*

*(C) the Secretary of Energy.*

*(k) REMEDIAL ACTION.—(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—*

*(A) in the case of a Department employee, take appropriate actions to abate the action; or*

*(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.*

*(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.*

*(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.*

*(l) RELATIONSHIP TO OTHER LAWS.—The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–512) or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.*

*(m) ANNUAL REPORT.—(1) Not later than 30 days after the commencement of each fiscal year, the Director 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 investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.*

*(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.*

*(n) IMPLEMENTATION REPORT.—Not later than December 5, 1999, 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 describing the implementation of the program required by this section.*

***SEC. 4603. 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 4421.*

*(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 4421(h) 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.—Section 8905a(d)(5)(A) of title 5, United States Code (as added by section 1106 of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 113 Stat. 1598)), is amended by inserting after "readjustment" the following: ", or a voluntary or involuntary separation from a Department of Energy position 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)".*

*(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 4421 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 participation 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.*

***SEC. 4604. DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES WORKFORCE RESTRUCTURING PLAN.***

*(a) IN GENERAL.—Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—*

*(1) the reconfiguration of the defense nuclear facility; and*

*(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.*

*(b) CONSULTATION.—(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.*

*(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).*

*(c) OBJECTIVES.—In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:*

*(1) Changes in the workforce at a Department of Energy defense nuclear facility—*

*(A) should be accomplished so as to minimize social and economic impacts;*

*(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and*

*(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.*

*(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive pref-*

*erence in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1682)).*

*(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.*

*(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.*

*(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).*

*(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—*

*(A) programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;*

*(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101–510; 10 U.S.C. 2391 note); and*

*(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).*

*(d) IMPLEMENTATION.—The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).*

*(e) PLAN UPDATES.—Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—*

*(1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;*

*(2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and*

*(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.*

*(f) SUBMITTAL TO CONGRESS.—(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.*

*(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.*

*(g) DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITY DEFINED.—In this section, the term "Department of Energy defense nuclear facility" means—*

*(1) a production facility or utilization facility (as those terms are defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;*

*(2) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;*

*(3) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);*

*(4) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or*

*(5) any facility described in paragraphs (1) through (4) that—*

*(A) is no longer in operation;*

*(B) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and*

*(C) was operated for national security purposes.*

***SEC. 4605. AUTHORITY TO PROVIDE CERTIFICATE OF COMMENDATION TO DEPARTMENT OF ENERGY AND CONTRACTOR EMPLOYEES FOR EXEMPLARY SERVICE IN STOCKPILE STEWARDSHIP AND SECURITY.***

*(a) AUTHORITY TO PRESENT CERTIFICATE OF COMMENDATION.—The Secretary of Energy may present a certificate of commendation to any current or former employee of the Department of Energy, and any current or former employee of a Department contractor, whose service to the Department in matters relating to stockpile stewardship and security assisted the Department in furthering the national security interests of the United States.*

*(b) CERTIFICATE.—The certificate of commendation presented to a current or former employee under subsection (a) shall include an appropriate citation of the service of the current or former employee described in that subsection, including a citation for dedication, intellect, and sacrifice in furthering the national security interests of the United States by maintaining a strong, safe, and viable United States nuclear deterrent during the Cold War or thereafter.*

*(c) DEPARTMENT OF ENERGY DEFINED.—For purposes of this section, the term "Department of Energy" includes any predecessor agency of the Department of Energy.*

## *Subtitle B—Education and Training*

***SEC. 4621. EXECUTIVE MANAGEMENT TRAINING IN THE DEPARTMENT OF ENERGY.***

*(a) ESTABLISHMENT OF TRAINING PROGRAM.—The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.*

*(b) TRAINING PROVISIONS.—The training program shall at a minimum include instruction in the following areas:*

*(1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.*

*(2) Methods of evaluating technical performance.*

*(3) Federal and State environmental laws and requirements for compliance with such environmental laws, including timely compliance with reporting requirements in such laws.*

*(4) The establishment of program milestones and methods to evaluate success in meeting such milestones.*

*(5) Methods for conducting long-range technical and budget planning.*

*(6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.*

***SEC. 4622. STOCKPILE STEWARDSHIP RECRUITMENT AND TRAINING PROGRAM.***

*(a) CONDUCT OF PROGRAM.—(1) As part of the stockpile stewardship program established pursuant to section 4201, the Secretary of Energy shall conduct a stockpile stewardship recruitment and training program at the Sandia National Laboratories, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.*

*(2) The recruitment and training program shall be conducted in coordination with the Chairman of the Joint Nuclear Weapons Council established by section 179 of title 10, United States Code, and the directors of the laboratories referred to in paragraph (1).*

*(b) SUPPORT OF DUAL-USE PROGRAMS.—(1) As part of the recruitment and training program, the directors of the laboratories referred to in subsection (a)(1) may employ undergraduate students, graduate students, and postdoctoral fellows to carry out research sponsored by such laboratories for military or nonmilitary dual-use programs related to nuclear weapons stockpile stewardship.*

*(2) Of the amounts authorized to be appropriated to the Secretary of Energy in section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) for weapons activities for core research and development and allocated by the Secretary for education initiatives, $5,000,000 shall be available for employing students and fellows to carry out research referred to in paragraph (1). The amount available under this paragraph shall be allocated equally among the laboratories referred to in subsection (a)(1).*

*(c) ESTABLISHMENT OF RETIREE CORPS.—As part of the training and recruitment program, the Secretary, in coordination with the directors of the laboratories referred to in subsection (a)(1), shall establish for the laboratories a retiree corps of retired scientists who*

*have expertise in research and development of nuclear weapons. The directors may employ the retired scientists on a part-time basis to provide appropriate assistance on nuclear weapons issues, to contribute relevant information to be archived, and to help to provide training to other scientists.*

*(d) REPORT.—(1) Not later than February 1, 1995, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demographic trends of the personnel of the laboratories referred to in subsection (a)(1) and on actions taken by the Department of Energy to remedy identified deficiencies in various skill areas.*

*(2) The report shall be prepared in coordination with the Chairman of the Joint Nuclear Weapons Council and the directors of the laboratories. Information included in the report shall be aggregated and compiled into statistical categories.*

*(3) The report shall include the following:*

*(A) An inventory of the weapons-related tasks that the laboratories need to perform to support their nuclear weapons responsibilities.*

*(B) An inventory of the skills necessary to complete the weapons-related tasks referred to in subparagraph (A).*

*(C) For each laboratory, the number of scientists needed in each skill area to perform such tasks.*

*(D) The number of the scientists providing services in each skill area at each laboratory, stated by age.*

*(E) An assessment of which skill areas are understaffed.*

*(F) The number of scientists entering the weapons program at each laboratory, and their skill areas.*

*(G) The number of full-time equivalent personnel with weapon skills, their distribution by skill and, for each such skill, their distribution by age.*

*(H) The number of scientists retiring from the weapons program in the five-year period ending on the date of the report and the skill areas in which they worked in the year preceding their retirement.*

*(I) Based on the information contained in subparagraphs (A) through (H), a projection of the skills areas that will become understaffed in the five years following the date of the report.*

*(J) A statement of alternative actions that may be taken to retain and recruit scientists for the weapons programs at the laboratories in order to preserve a sufficient skill base and to fulfill stockpile stewardship responsibilities.*

*(K) Any plans of the Secretary to take any of the alternative actions referred to in subparagraph (J).*

***SEC. 4623. FELLOWSHIP PROGRAM FOR DEVELOPMENT OF SKILLS CRITICAL TO THE DEPARTMENT OF ENERGY NUCLEAR WEAPONS COMPLEX.***

*(a) IN GENERAL.—The Secretary of Energy shall conduct a fellowship program for the development of skills critical to the ongoing mission of the Department of Energy nuclear weapons complex. Under the fellowship program, and research assistance to eligible individuals to facilitate the development by such individuals of skills critical to maintaining the ongoing mission of the Department of Energy nuclear weapons complex.*

*(b) ELIGIBLE INDIVIDUALS.—Individuals eligible for participation in the fellowship program are United States citizens who are the following:*

*(1) Students pursuing graduate degrees in fields of science or engineering that are related to nuclear weapons engineering or to the science and technology base of the Department of Energy.*

*(2) Individuals engaged in postdoctoral studies in such fields.*

*(c) COVERED FACILITIES.—The Secretary shall carry out the fellowship program at or in connection with the following facilities:*

*(1) The Kansas City Plant, Kansas City, Missouri.*

*(2) The Pantex Plant, Amarillo, Texas.*

*(3) The Y–12 Plant, Oak Ridge, Tennessee.*

*(4) The Savannah River Site, Aiken, South Carolina.*

*(5) The Lawrence Livermore National Laboratory, Livermore, California.*

*(6) The Los Alamos National Laboratory, Los Alamos, New Mexico.*

*(7) The Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.*

*(d) ADMINISTRATION.—The Secretary shall carry out the fellowship program at a facility referred to in subsection (c) through the stockpile manager of the facility.*

*(e) ALLOCATION OF FUNDS.—The Secretary shall, in consultation with the Assistant Secretary of Energy for Defense Programs, allocate funds available for the fellowship program under subsection (f) among the facilities referred to in subsection (c). The Secretary shall make the allocation after evaluating an assessment by the weapons program director of each such facility of the personnel and critical skills necessary at the facility for carrying out the ongoing mission of the facility.*

*(f) AGREEMENT.—(1) The Secretary may allow an individual to participate in the program only if the individual signs an agreement described in paragraph (2).*

*(2) An agreement referred to in paragraph (1) shall be in writing, shall be signed by the participant, and shall include the participant's agreement to serve, after completion of the course of study for which the assistance was provided, as a full-time employee in a position in the Department of Energy for a period of time to be established by the Secretary of Energy of not less than one year, if such a position is offered to the participant.*

## *Subtitle C—Worker Safety*

***SEC. 4641. WORKER PROTECTION AT NUCLEAR WEAPONS FACILITIES.***

*(a) TRAINING GRANT PROGRAM.—(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—*

*(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and*

*(B) to develop curricula for such training and education.*

*(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—*

*(i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and*

*(ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.*

*(B) The Secretary shall give preference in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a).*

*(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.*

*(b) ENFORCEMENT OF EMPLOYEE SAFETY STANDARDS.—(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—*

*(A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and*

*(B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).*

*(2) Civil penalties assessed under this subsection may not exceed $5,000 for each day in which a failure referred to in paragraph (1)(B) occurs.*

*(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.*

*(d) DEFINITIONS.—For the purposes of this section, the term "hazardous substance" includes radioactive waste and mixed radioactive and hazardous waste.*

*(e) FUNDING.—Of the funds authorized to be appropriated pursuant to section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), $10,000,000 may be used for the purpose of carrying out this section.*

***SEC. 4642. SAFETY OVERSIGHT AND ENFORCEMENT AT DEFENSE NUCLEAR FACILITIES.***

*(a) SAFETY AT DEFENSE NUCLEAR FACILITIES.—The Secretary of Energy shall take appropriate actions to ensure that—*

*(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from*

*officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;*

*(2) the independent, internal oversight functions carried out by the Department include activities relating to—*

*(A) the assessment of the safety of defense nuclear facilities;*

*(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;*

*(C) the provision to the Secretary of oversight reports that—*

*(i) contain validated technical information; and*

*(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and*

*(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);*

*(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and*

*(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.*

*(b) REPORT.—Not later than January 5, 1995, the Secretary shall submit to Congress a report describing the following:*

*(1) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).*

*(2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.*

*(3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:*

*(A) The Associate Deputy Secretary of Energy for Field Management.*

*(B) The Assistant Secretary of Energy for Defense Programs.*

*(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.*

***SEC. 4643. PROGRAM TO MONITOR DEPARTMENT OF ENERGY WORKERS EXPOSED TO HAZARDOUS AND RADIOACTIVE SUBSTANCES.***

*(a) IN GENERAL.—The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.*

*(b) IMPLEMENTATION OF PROGRAM.—(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—*

*(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;*

*(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);*

*(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;*

*(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;*

*(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and*

*(F) ensure that employee participation in the program is voluntary.*

*(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).*

*(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;*

*(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:*

*(A) The American College of Occupational and Environmental Medicine.*

*(B) The National Academy of Sciences.*

*(C) The National Council on Radiation Protection.*

*(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.*

*(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.*

*(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).*

*(6) The Secretary shall commence carrying out the program described in this subsection not later than October 23, 1993.*

*(c) AGREEMENT WITH SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than April 23, 1993, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.*

*(c) DEFINITIONS.—In this section:*

*(1) The term "Department of Energy defense nuclear facility" has the meaning given that term in section 4604(g).*

*(2) The term "Department of Energy employee" means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor of subcontractor of the Department of Energy employed at such a facility.*

# *TITLE XLVII—BUDGET AND FINANCIAL MANAGEMENT MATTERS*

## *Subtitle A—Recurring National Security Authorization Provisions*

**SEC. [3620.] *4701.* DEFINITIONS.**

In this subtitle:

(1) * * *

* * * * * * *

**SEC. [3621.] *4702.* REPROGRAMMING.**

(a) IN GENERAL.—Except as provided in subsection (b) and in [sections 3629 and 3630] *sections 4710 and 4711*, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

(1) * * *

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**SEC. [3622.] *4703.* MINOR CONSTRUCTION PROJECTS.**

(a) * * *

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**SEC. [3623.] *4704.* LIMITS ON CONSTRUCTION PROJECTS.**

(a) * * *

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**SEC. [3624.] *4705.* FUND TRANSFER AUTHORITY.**

(a) * * *

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**SEC. [3625.] *4706.* CONCEPTUAL AND CONSTRUCTION DESIGN.**

(a) CONCEPTUAL DESIGN.—

(1) * * *

* * * * * * *

(3) EXCEPTIONS.—The requirement in paragraph (1) does not apply to a request for funds—

(A) * * *

(B) for emergency planning, design, and construction activities under section [3626] *4707*.

* * * * * * *

**SEC. [3626.] *4707*. AUTHORITY FOR EMERGENCY PLANNING, DESIGN, AND CONSTRUCTION ACTIVITIES.**

(a) * * *

* * * * * * *

(c) SPECIFIC AUTHORITY.—The requirement of section [3625(b)(2)] *4706(b)(2)* does not apply to emergency planning, design, and construction activities conducted under this section.

**SEC. [3627.] *4708*. SCOPE OF AUTHORITY TO CARRY OUT PLANT PROJECTS.**

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

**[SEC. 3628. AVAILABILITY OF FUNDS.**

[(a) IN GENERAL.—Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

[(b) EXCEPTION FOR PROGRAM DIRECTION FUNDS.—Amounts appropriated for program direction pursuant to a DOE national security athorization for a fiscal year shall remain available to be obligated only until the end of that fiscal year.]

***SEC. 4709. AVAILABILITY OF FUNDS.***

*(a) IN GENERAL.—Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for a fiscal year—*

*(1) shall remain available to be expended only in that fiscal year and the two succeeding fiscal years, in the case of amounts for the National Nuclear Security Administration; and*

*(2) may, when so specified in an appropriations Act, remain available until expended, in all other cases.*

*(b) PROGRAM DIRECTION.—Amounts appropriated pursuant to a DOE national security authorization for a fiscal year for program direction shall remain available to be obligated only until the end of that fiscal year.*

**SEC. [3629.] *4710*. TRANSFER OF DEFENSE ENVIRONMENTAL MANAGEMENT FUNDS.**

(a) * * *

* * * * * * *

(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section [3621] *4702* shall not apply to transfers of funds pursuant to subsection (a).

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**SEC. [3630.] *4711.* TRANSFER OF WEAPONS ACTIVITIES FUNDS.**

(a) * * *

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(c) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—The requirements of section [3621] *4702* shall not apply to transfers of funds pursuant to subsection (a).

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**SEC. [3631.] *4712.* FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.**

Subject to the provisions of appropriation Acts and section [3621] *4702*, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

## *Subtitle B—Penalties*

***SEC. 4721. RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER ENVIRONMENTAL LAWS.***

*(a) RESTRICTION.—Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.*

*(b) EXCEPTION.—Subsection (a) shall not apply with respect to an environmental requirement if—*

*(1) the President fails to request funds for compliance with the environmental requirement; or*

*(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.*

***SEC. 4722. RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER CLEAN AIR ACT.***

*None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.*

## *Subtitle C—Other Matters*

***SEC. 4731. SINGLE REQUEST FOR AUTHORIZATION OF APPROPRIATIONS FOR COMMON DEFENSE AND SECURITY PROGRAMS.***

*The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.*

# *TITLE XLVIII—ADMINISTRATIVE MATTERS*

## *Subtitle A—Contracts*

***SEC. 4801. COSTS NOT ALLOWED UNDER COVERED CONTRACTS.***

*(a) IN GENERAL.—The following costs are not allowable under a covered contract:*

*(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).*

*(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.*

*(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).*

*(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.*

*(5) Costs of membership in any social, dining, or country club or organization.*

*(6) Costs of alcoholic beverages.*

*(7) Contributions or donations, regardless of the recipient.*

*(8) Costs of advertising designed to promote the contractor or its products.*

*(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.*

*(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the per-*

*formance of the contract and the cost of which exceeds the amount of the standard commercial fare.*

*(b)(1) REGULATIONS.—Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).*

*(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:*

*(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.*

*(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.*

*(c) DEFINITION.—In this section, "covered contract" means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.*

*(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.*

***SEC. 4802. PROHIBITION AND REPORT ON BONUSES TO CONTRACTORS OPERATING DEFENSE NUCLEAR FACILITIES.***

*(a) PROHIBITION.—The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor's compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor's qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.*

*(b) REPORT ON ROCKY FLATS BONUSES.—The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than May 29, 1990, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.*

*(c) DEFINITION.—In this section, the term "Department of Energy defense nuclear facility" has the meaning given such term by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).*

*(d) REGULATIONS.—The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.*

***SEC. 4803. CONTRACTOR LIABILITY FOR INJURY OR LOSS OF PROPERTY ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS.***

*(a) SHORT TITLE.—This section may be cited as the "Atomic Testing Liability Act".*

*(b) FEDERAL REMEDIES APPLICABLE; EXCLUSIVENESS OF REMEDIES.—*

*(1) REMEDY.—The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, by the Act of March 9, 1920 (46 U.S.C. App. 741–752), or by the Act of March 3, 1925 (46 U.S.C. App. 781–790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.*

*(2) EXCLUSIVITY.—The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.*

*(c) PROCEDURE.—A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.*

*(d) ACTIONS COVERED.—The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, United States Code, if a civil action or proceeding to which this section applies is pending on the date of the enactment of this Act and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall there-*

*after be subject to the provisions of section 2401(b) of title 28, United States Code.*

*(e) "CONTRACTOR" DEFINED.—For purposes of this section, the term "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).*

## *Subtitle B—Research and Development*

***SEC. 4811. LABORATORY–DIRECTED RESEARCH AND DEVELOPMENT PROGRAMS.***

*(a) AUTHORITY.—Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.*

*(b) REGULATIONS.—The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.*

*(c) FUNDING.—Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.*

*(d) DEFINITION.—For purposes of this section, the term "laboratory-directed research and development" means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.*

***SEC. 4812. LIMITATIONS ON USE OF FUNDS FOR LABORATORY DIRECTED RESEARCH AND DEVELOPMENT PURPOSES.***

*(a) GENERAL LIMITATIONS.—(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.*

*(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the envi-*

*ronmental restoration mission, waste management mission, or materials stabilization mission, as the case may be, of the Department of Energy.*

*(b) LIMITATION IN FISCAL YEAR 1998 PENDING SUBMITTAL OF ANNUAL REPORT.—Not more than 30 percent of the funds authorized to be appropriated or otherwise made available to the Department of Energy in fiscal year 1998 for laboratory directed research and development may be obligated or expended for such research and development until the Secretary of Energy submits to the congressional defense committees the report required by section 4812A(b) in 1998.*

*(c) SUBMITTAL DATE FOR ANNUAL REPORT ON LABORATORY DIRECTED RESEARCH AND DEVELOPMENT PROGRAM.—Paragraph (1) of section 3136(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2831; 42 U.S.C. 7257b) is amended by striking out "The Secretary of Energy shall annually submit" and inserting in lieu thereof "Not later than February 1 each year, the Secretary of Energy shall submit".*

*(d) ASSESSMENT OF FUNDING LEVEL FOR LABORATORY DIRECTED RESEARCH AND DEVELOPMENT.—The Secretary shall include in the report submitted under such section 4812A(b)(1) in 1998 an assessment of the funding required to carry out laboratory directed research and development, including a recommendation for the percentage of the funds provided to Government-owned, contractor-operated laboratories for national security activities that should be made available for such research and development under section 4811(c).*

*(e) DEFINITION.—In this section, the term "laboratory directed research and development" has the meaning given that term in section 4811(d).*

***SEC. 4812A. LIMITATION ON USE OF FUNDS FOR CERTAIN RESEARCH AND DEVELOPMENT PURPOSES.***

*(a) LIMITATION.—No funds authorized to be appropriated or otherwise made available to the Department of Energy for fiscal year 1997 under section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.*

*(b) ANNUAL REPORT.—(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.*

*(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.*

*(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.*

***SEC. 4813. CRITICAL TECHNOLOGY PARTNERSHIPS.***

*(a) PARTNERSHIPS.—For the purpose of facilitating the transfer of technology, the Secretary of Energy shall ensure, to the maximum extent practicable, that atomic energy defense activities research on, and development of, any dual-use critical technology is conducted through cooperative research and development agreements, or other arrangements, that involve laboratories of the Department of Energy and other entities.*

*(b) DEFINITIONS.—In this section:*

*(1) The term "dual-use critical technology" means a technology—*

*(A) that is critical to atomic energy defense activities, as determined by the Secretary of Energy;*

*(B) that has military applications and nonmilitary applications; and*

*(C) that either—*

*(i)(I) appears on the list of national critical technologies contained in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)); and*

*(II) has not been expressly deleted from such list by such a report subsequently submitted to Congress by the President; or*

*(ii)(I) appears on the list of critical technologies contained in an annual defense critical technologies plan submitted to Congress by the Secretary of Defense pursuant to section 2506 of title 10, United States Code; and*

*(II) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.*

*(2) The term "cooperative research and development agreement" has the meaning given that term by section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)).*

*(3) The term "other entities" means—*

*(A) firms, or a consortium of firms, that are eligible to participate in a partnership or other arrangement with a laboratory of the Department of Energy, as determined in accordance with applicable law and regulations; or*

*(B) firms, or a consortium of firms, described in subparagraph (A) in combination with one or more of the following:*

*(i) Institutions of higher education in the United States.*

*(ii) Departments and agencies of the Federal Government other than the Department of Energy.*

*(iii) Agencies of State Governments.*

*(iv) Any other persons or entities that may be eligible and appropriate, as determined in accordance with applicable laws and regulations.*

*(4) The term "atomic energy defense activities" does not include activities covered by Executive Order No. 12344, dated*

*February 1, 1982, pertaining to the Naval nuclear propulsion program.*

***SEC. 4814. UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM.***

*(a) FINDINGS.—Congress makes the following findings:*

*(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.*

*(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.*

*(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.*

*(b) PROGRAM.—The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.*

*(c) FUNDING.—Of the funds authorized to be appropriated in title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to the Department of Energy for fiscal year 1998, the Secretary shall make $5,000,000 available for the establishment and operation of the program under subsection (b).*

## *Subtitle C—Facilities Management*

***SEC. 4831. 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 indemnification*

*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).*

***SEC. 4832. ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS.***

*(a) AUTHORITY FOR PROGRAMS AT NUCLEAR WEAPONS PRODUCTIONS FACILITIES.—The Administrator for Nuclear Security shall authorize the head of each nuclear weapons production facility to establish an Engineering and Manufacturing Research, Development, and Demonstration Program under this section.*

*(b) PROJECTS AND ACTIVITIES.—The projects and activities carried out through the program at a nuclear weapons production facility under this section shall support innovative or high-risk design and manufacturing concepts and technologies with potentially high payoff for the nuclear weapons complex. Those projects and activities may include—*

*(1) replacement of obsolete or aging design and manufacturing technologies;*

*(2) development of innovative agile manufacturing techniques and processes; and*

*(3) training, recruitment, or retention of essential personnel in critical engineering and manufacturing disciplines.*

*(c) FUNDING.—The Administrator may authorize the head of each nuclear weapons production facility to obligate up to $3,000,000 of funds within the Advanced Design and Production Technologies Campaign available for such facility during fiscal year 2001 to carry out projects and activities of the program under this section at that facility.*

*(d) REPORT.—The Administrator for Nuclear Security 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 September 15, 2001, a report describing, for each nuclear weapons production facility, each project or activity for which funds were obligated under the program, the criteria used in the selection of each such project or activity, the potential benefits of each such project or activity, and the Administrator's recommendation concerning whether the program should be continued.*

*(e) DEFINITION.—For purposes of this section, the term "nuclear weapons production facility" has the meaning given that term in section 3281(2) of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 968; 50 U.S.C. 2471(2)).*

***SEC. 4833. PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS.***

*(a) PURPOSE.—The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.*

*(b) USE OF PROCEEDS TO DEFRAY COSTS.—(1) Notwithstanding section 3302 of title 31, United States Code, the Secretary may retain from the proceeds of the sale, lease, or disposal of an asset*

*under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.*

*(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—*

*(A) the cost of administering the sale, lease, or disposal;*

*(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and*

*(C) any other cost associated with the sale, lease, or disposal.*

*(c) COVERED TRANSACTIONS.—Subsection (b) applies to the following transactions:*

*(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.*

*(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.*

*(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.*

*(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.*

*(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.*

*(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are under the jurisdiction of the Defense Environmental Management Program.*

*(d) APPLICABILITY OF DISPOSAL AUTHORITY.—Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40, United States Code, to the disposal of equipment and other personal property covered by this section.*

*(e) REPORT.—Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.*

## *Subtitle D—Other Matters*

***SEC. 4851. SEMIANNUAL REPORTS ON LOCAL IMPACT ASSISTANCE.***

*The Secretary of Energy shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under section 4604(c)(6).*

# *TITLE XLIX—MATTERS RELATING TO PARTICULAR FACILITIES*

## *Subtitle A—Hanford Reservation, Washington*

***SEC. 4901. SAFETY MEASURES FOR WASTE TANKS AT HANFORD NUCLEAR RESERVATION.***

*(a) IDENTIFICATION AND MONITORING OF TANKS.—Not later than February 3, 1991, the Secretary of Energy shall identify which single-shelled or double-shelled high-level nuclear waste tanks at the Hanford Nuclear Reservation, Richland, Washington, may have a serious potential for release of high-level waste due to uncontrolled increases in temperature or pressure. After completing such identification, the Secretary shall determine whether continuous monitoring is being carried out to detect a release or excessive temperature or pressure at each tank so identified. If such monitoring is not being carried out, as soon as practicable the Secretary shall install such monitoring, but only if a type of monitoring that does not itself increase the danger of a release can be installed.*

*(b) ACTION PLANS.—Not later than March 5, 1991, the Secretary of Energy shall develop action plans to respond to excessive temperature or pressure or a release from any tank identified under subsection (a).*

*(c) PROHIBITION.—Beginning March 5, 1991, no additional high-level nuclear waste (except for small amounts removed and returned to a tank for analysis) may be added to a tank identified under subsection (a) unless the Secretary determines that no safer alternative than adding such waste to the tank currently exists or that the tank does not pose a serious potential for release of high-level nuclear waste.*

*(d) REPORT.—Not later than May 5, 1991, the Secretary shall submit to Congress a report on actions taken to promote tank safety, including actions taken pursuant to this section, and the Secretary's timetable for resolving outstanding issues on how to handle the waste in such tanks.*

***SEC. 4902. PROGRAMS FOR PERSONS WHO MAY HAVE BEEN EXPOSED TO RADIATION RELEASED FROM HANFORD NUCLEAR RESERVATION.***

*(a) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), the Secretary of Energy shall make available $3,000,000 to the State of Washington, $1,000,000 to the State of Oregon, and $1,000,000 to the State of Idaho. Such funds shall be used to develop and implement programs for the benefit of persons who may have been exposed to radiation released from the Department of Energy Hanford Nuclear Reservation (Richland, Washington) between the years 1944 and 1972.*

*(b) PROGRAMS.—The programs to be developed by the States may include only the following activities:*

*(1) Preparing and distributing information on the health effects of radiation to health care professionals, and to persons who may have been exposed to radiation.*

*(2) Developing and implementing mechanisms for referring persons who may have been exposed to radiation to health care professionals with expertise in the health effects of radiation.*

*(3) Evaluating and, if feasible, implementing, registration and monitoring of persons who may have been exposed to radiation released from the Hanford Nuclear Reservation.*

*(c) PLAN AND REPORTS.—(1) The States of Washington, Oregon, and Idaho shall jointly develop a single plan for implementing this section.*

*(2) Not later than May 5, 1991, such States shall submit to the Secretary of Energy and the Congress a copy of the plan developed under paragraph (1).*

*(3) Not later than May 5, 1992, such States shall submit to the Secretary of Energy and the Congress a single report on the implementation of the plan developed under paragraph (1).*

*(4) In developing and implementing the plan, such States shall consult with persons carrying out current radiation dose and epidemiological research programs (including the Hanford Thyroid Disease Study of the Centers for Disease Control and the Hanford Environmental Dose Reconstruction Project of the Department of Energy), and may not cause substantial damage to such research programs.*

*(d) PROHIBITION ON DISCLOSURE OF EXPOSURE INFORMATION.—(1) Except as provided in paragraph (2), a person may not disclose to the public the following:*

*(A) Any information obtained through a program that identifies a person who may have been exposed to radiation released from the Hanford Nuclear Reservation.*

*(B) Any information obtained through a program that identifies a person participating in any of the programs developed under this section.*

*(C) The name, address, and telephone number of a person requesting information referred to in subsection (b)(1).*

*(D) The name, address, and telephone number of a person who has been referred to a health care professional under subsection (b)(2).*

*(E) The name, address, and telephone number of a person who has been registered and monitored pursuant to subsection (b)(3).*

*(F) Information that identifies the person from whom information referred to in this paragraph was obtained under a program or any other third party involved with, or identified by, any such information so obtained.*

*(G) Any other personal or medical information that identifies a person or party referred to in subparagraphs (A) through (F).*

*(H) Such other information or categories of information as the chief officers of the health departments of the States of Washington, Oregon, and Idaho jointly designate as information covered by this subsection.*

*(2) Information referred to in paragraph (1) may be disclosed to the public if the person identified by the information, or the legal*

*representative of that person, has consented in writing to the disclosure.*

*(3) The States of Washington, Oregon, and Idaho shall establish uniform procedures for carrying out this subsection, including procedures governing the following:*

*(A) The disclosure of information under paragraph (2).*

*(B) The use of the Hanford Health Information Network database.*

*(C) The future disposition of the database.*

*(D) Enforcement of the prohibition provided in paragraph (1) on the disclosure of information described in that paragraph.*

***SEC. 4903. HANFORD WASTE TANK CLEANUP PROGRAM REFORMS.***

*(a) ESTABLISHMENT OF OFFICE OF RIVER PROTECTION.—The Secretary of Energy shall establish an office at the Hanford Reservation, Richland, Washington, to be known as the "Office of River Protection" (in this section referred to as the "Office").*

*(b) MANAGEMENT AND RESPONSIBILITIES OF OFFICE.—(1) The Office shall be headed by a senior official of the Department of Energy, who shall report to the Assistant Secretary of Energy for Environmental Management.*

*(2) The head of the Office shall be responsible for managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.*

*(c) DEPARTMENT RESPONSIBILITIES.—The Secretary shall provide the manager of the Office with the resources and personnel necessary to manage the tank waste privatization program at Hanford in an efficient and streamlined manner.*

*(d) INTEGRATED MANAGEMENT PLAN.—Not later than November 29, 2000, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committees on Commerce and on National Security of the House of Representatives an integrated management plan for all aspects of the Hanford Tank Farm operations, including the roles, responsibilities, and reporting relationships of the Office.*

*(e) REPORT.—Not later than 2 years after the commencement of operations of the Office, the Secretary shall submit to the committees referred to in subsection (d) a report describing—*

*(1) any progress in or resulting from the utilization of the Tank Waste Remediation System; and*

*(2) any improvements in the management structure of the Department at Hanford with respect to the Tank Waste Remediation System as a result of the Office.*

*(f) TERMINATION.—(1) The Office shall terminate on the later to occur of the following dates:*

*(A) September 30, 2010.*

*(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.*

*(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).*

*(3) In this subsection, the term "Tri-Party Agreement" means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.*

***SEC. 4904. RIVER PROTECTION PROJECT.***

*The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the "River Protection Project". Any reference to that project in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.*

***SEC. 4905. FUNDING FOR TERMINATION COSTS OF RIVER PROTECTION PROJECT, RICHLAND, WASHINGTON.***

*The Secretary of Energy may not use appropriated funds to establish a reserve for the payment of any costs of termination of any contract relating to the River Protection Project, Richland, Washington (as designated by section 4904), that is terminated after October 30, 2000. Such costs may be paid from—*

*(1) appropriations originally available for the performance of the contract concerned;*

*(2) appropriations currently available for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs, and not otherwise obligated; or*

*(3) funds appropriated specifically for the payment of such costs.*

## *Subtitle B—Savannah River Site, South Carolina*

***SEC. 4911. ACCELERATED SCHEDULE FOR ISOLATING HIGH-LEVEL NUCLEAR WASTE AT THE DEFENSE WASTE PROCESSING FACILITY, SAVANNAH RIVER SITE.***

*The Secretary of Energy shall accelerate the schedule for the isolation of high-level nuclear waste in glass canisters at the Defense Waste Processing Facility at the Savannah River Site, South Carolina, if the Secretary determines that the acceleration of such schedule—*

*(1) will achieve long-term cost savings to the Federal Government; and*

*(2) could accelerate the removal and isolation of high-level nuclear waste from long-term storage tanks at the site.*

***SEC. 4912. MULTI-YEAR PLAN FOR CLEAN-UP.***

*The Secretary of Energy shall develop and implement a multi-year plan for the clean-up of nuclear waste at the Savannah River Site that results, or has resulted, from the following:*

*(1) Nuclear weapons activities carried out at the site.*

*(2) The processing, treating, packaging, and disposal of Department of Energy domestic and foreign spent nuclear fuel rods at the site.*

***SEC. 4913. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.***

*The Secretary of Energy shall continue operations and maintain a high state of readiness at the F–canyon and H–canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.*

***SEC. 4913A. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.***

*The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide the technical staff necessary to operate and so maintain such facilities.*

***SEC. 4913B. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.***

*The Secretary of Energy shall continue operations and maintain a high state of readiness at the F–canyon and H–canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.*

***SEC. 4913C. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.***

*The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site and shall provide technical staff necessary to operate and maintain such facilities at that state of readiness.*

***SEC. 4913D. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSAL OF LEGACY NUCLEAR MATERIALS.***

*The Secretary of Energy shall continue operations and maintain a high state of readiness at the H-canyon facility and the F-canyon facility at the Savannah River Site, and shall provide technical staff necessary to operate and so maintain such facilities, pending the development and implementation of the plan referred to in section 4912.*

***SEC. 4914. LIMITATION ON USE OF FUNDS FOR DECOMMISSIONING F–CANYON FACILITY.***

*No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F–canyon facility at the Savannah River Site until the Secretary of Energy and the Defense Nuclear Facilities Safety Board jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:*

*(1) A certification that all materials present in the F–canyon facility as of the date of the certification are safely stabilized.*

*(2) A certification whether or not the requirements applicable to the F–canyon facility to meet the future needs of the United States for fissile materials disposition can be met*

*through full use of the H–canyon facility at the Savannah River Site.*

*(3) If the certification required by paragraph (2) is that such requirements cannot be met through such use of the H–canyon facility—*

*(A) an identification by the Secretary of each such requirement that cannot be met through such use of the H–canyon facility; and*

*(B) for each requirement identified in subparagraph (A), the reasons why that requirement cannot be met through such use of the H–canyon facility and a description of the alternative capability for fissile materials disposition that is needed to meet that requirement.*

**SEC. [3182.] *4915.* DISPOSITION OF WEAPONS-USABLE PLUTONIUM AT SAVANNAH RIVER SITE.**

(a) * * *

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***SEC. 4915A. DISPOSITION OF SURPLUS DEFENSE PLUTONIUM AT SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA.***

*(a) CONSULTATION REQUIRED.—The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.*

*(b) NOTICE REQUIRED.—For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.*

*(c) PLAN FOR DISPOSITION.—The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:*

*(1) A review of each option considered for such disposal.*

*(2) An identification of the preferred option for such disposal.*

*(3) With respect to the facilities for such disposal that are required by the Department of Energy's Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—*

*(A) a statement of the cost of construction and operation of such facilities;*

*(B) a schedule for the expeditious construction of such facilities, including milestones; and*

*(C) a firm schedule for funding the cost of such facilities.*

*(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.*

*(d) PLAN FOR ALTERNATIVE DISPOSITION.—If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.*

*(e) SUBMISSION OF PLANS.—Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).*

*(f) LIMITATION ON PLUTONIUM SHIPMENTS.—If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.*

*(g) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.*

*(h) ANNUAL REPORT ON FUNDING FOR FISSILE MATERIALS DISPOSITION ACTIVITIES.—The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.*

## *Subtitle C—Other Facilities*

***SEC. 4921. PAYMENT OF COSTS OF OPERATION AND MAINTENANCE OF INFRASTRUCTURE AT NEVADA TEST SITE.***

*Notwithstanding any other provision of law and effective as of September 30, 1996, the costs associated with operating and maintaining the infrastructure at the Nevada Test Site, Nevada, with respect to any activities initiated at the site after that date by the Department of Defense pursuant to a work-for-others agreement may be paid for from funds authorized to be appropriated to the Department of Energy for activities at the Nevada Test Site.*

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## TITLE 10, UNITED STATES CODE

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# Subtitle A—General Military Law

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# PART I—ORGANIZATION AND GENERAL MILITARY POWERS


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## CHAPTER 1—DEFINITIONS

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### § 101. Definitions

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

(1) * * *

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(9) The term "Secretary concerned" means—

(A) * * *

* * * * * * *

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

* * * * * * *

*(16) 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.*

*(17) The term "base closure law" means the following:*

*(A) Section 2687 of this title.*

*(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).*

*(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).*

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## CHAPTER 2—DEPARTMENT OF DEFENSE

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### § 113. Secretary of Defense

(a) * * *

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

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

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

* * * * * * *

### § 113a. Transmission of annual defense authorization request

(a) * * *

(b) DEFENSE AUTHORIZATION REQUEST DEFINED.—In this section, the term "defense authorization request", with respect to a fiscal year, means a legislative proposal submitted to Congress for the enactment of the following:

(1) * * *

* * * * * * *

*(3) Authority to carry out military construction projects, as required by section 2802 of this title.*

[(3)] *(4)* Any other matter that is proposed by the Secretary of Defense to be enacted as part of the annual defense authorization bill for that fiscal year.

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### § 117. Readiness reporting system: establishment; reporting to congressional committees

(a) * * *

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(e) SUBMISSION TO CONGRESSIONAL COMMITTEES.—The Secretary shall [each month submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report in writing containing

the results of the most recent joint readiness review or monthly review conducted under subsection (d)] *each quarter submit to the congressional defense committees a report in writing containing the results of the most recent joint readiness review under subsection (d)(1)(A)*, including the current information derived from the readiness reporting system. Each such report shall be submitted in unclassified form and may, as the Secretary determines necessary, also be submitted in classified form.

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## CHAPTER 3—GENERAL POWERS AND FUNCTIONS

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### § 127. Emergency and extraordinary expenses

(a) * * *

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

*(d) ANNUAL REPORT.—Not later than December 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).*

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

(a) IN GENERAL.—(1) * * *

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

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

* * * * * * *

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

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

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

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

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

[(3) The objectives of the operation.

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

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

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

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

(a) * * *

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

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

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

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

**§ 129. Prohibition of certain civilian personnel management constraints**

(a) * * *

* * * * * * *

[(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representa-

tives a report on the management of the civilian workforce under the jurisdiction of that official.

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

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

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

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

* * * * * * *

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

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

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

* * * * * * *

*(d) ADDITIONAL AUTHORITY.—(1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts with individuals, regardless of their nationality, outside of the United States.*

*(2) The contracting officer for a personal services contract shall be responsible for ensuring that a personal services contract is the appropriate vehicle for carrying out the purpose of the contract.*

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## CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

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

(a) * * *

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(c) The Under Secretary—

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

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**§ 135. Under Secretary of Defense (Comptroller)**

(a) * * *

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

[(2) The committees referred to in paragraph (1) are—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

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## CHAPTER 5—JOINT CHIEFS OF STAFF

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**§ 153. Chairman: functions**

(a) * * *

(b) RISKS UNDER NATIONAL MILITARY STRATEGY.—(1) Not later than January 1 [each year] *of each odd-numbered year*, the Chairman shall submit to the Secretary of Defense a report providing the Chairman's assessment of the nature and magnitude of the strategic and military risks associated with executing the missions called for under the current National Military Strategy.

* * * * * * *

(c) ANNUAL REPORT ON COMBATANT COMMAND REQUIREMENTS.—(1) At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Chairman shall submit to the [committees of Congress named in paragraph (2)] *congressional defense committees* a report on the requirements of the combatant commands established under section 161 of this title.

[The report] *(2) Each report under paragraph (1)* shall contain the following:

(A) * * *

* * * * * * *

[(2) The committees of Congress referred to in paragraph (1) are the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.]

*(d) BIENNIAL REVIEW OF NATIONAL MILITARY STRATEGY.—(1) Not later then February 15 of each even-numbered year, the Chairman 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 results of a comprehensive examination of the national military strategy. Each such examination shall be conducted by the Chairman in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified commands.*

*(2) Each report on the examination of the national military strategy under paragraph (1) shall include the following:*

*(A) Delineation of a national military strategy consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a) and the most recent Quadrennial Defense Review prescribed by the Secretary of Defense pursuant to section 118 of this title.*

*(B) A description of the strategic environment and the opportunities and challenges that affect United States national interests and United States national security.*

*(C) A description of the regional threats to United States national interests and United States national security.*

*(D) A description of the international threats posed by terrorism, weapons of mass destruction, and asymmetric challenges to United States national security.*

*(E) Identification of United States national military objectives and the relationship of those objectives to the strategic environment, regional, and international threats.*

*(F) Identification of the strategy, underlying concepts, and component elements that contribute to the achievement of United States national military objectives.*

*(G) Assessment of the capabilities and adequacy of United States forces (including both active and reserve components) to successfully execute the national military strategy.*

*(H) Assessment of the capabilities, adequacy, and interoperability of regional allies of the United States and or other friendly nations to support United States forces in combat operations and other operations for extended periods of time.*

*(I) Assessment of the resources, basing requirements, and support structure needed to provide the capabilities necessary to be assured United States forces can successfully achieve national military objectives and to assess what resources and support might be required to sustain allies or friendly nation forces during combat operations.*

*(3)(A) As part of the assessment under this subsection, the Chairman, in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified commands, shall undertake an assessment of the nature and magnitude of the strategic and military risks associated with successfully executing the missions called for under the current National Military Strategy.*

*(B) In preparing the assessment of risk, the Chairman should assume the existence of those threats described in subparagraphs (C) and (D) of paragraph (2) and should assess the risk associated with two regional threats occurring nearly simultaneously.*

*(C) In addition to the assumptions to be made under subparagraph (B), the Chairman should make other assumptions pertaining to the readiness of United States forces (in both the active and reserve components), the length of conflict and the level of intensity of combat operations, and the levels of support from allies and other friendly nations.*

*(4) Before submitting a report under this subsection to the Committees on Armed Services of the Senate and House of Representatives, the Chairman shall provide the report to the Secretary of De-*

*fense. The Secretary's assessment and comments thereon (if any) shall be included with the report. If the Chairman's assessment in such report in any year is that the risk associated with executing the missions called for under the National Military Strategy is significant, the Secretary shall include with the report as submitted to those committees the Secretary's plan for mitigating the risk.*

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## CHAPTER 6—COMBATANT COMMANDS

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### § 167. Unified combatant command for special operations forces

(a) * * *

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*(l) PERSONAL SERVICES CONTRACTS.—(1) The Secretary of Defense may, notwithstanding section 3109 of title 5, enter into personal services contracts in the United States if the personal services directly support the mission of the special operations command.*

*(2) The contracting officer for a personal services contract shall be responsible for ensuring that a personal services contract is the appropriate vehicle for carrying out the purpose of the contract.*

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## CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

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### § 181. Joint Requirements Oversight Council

(a) * * *

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(d) AVAILABILITY OF OVERSIGHT INFORMATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(1) * * *

(2) In this [subsection:

[(A) The term "oversight] *subsection, the term "oversight* information" means information and materials comprising analysis and justification that are prepared to support a recommendation that is made to, and approved by, the Secretary of Defense.

[(B) The term "congressional defense committees" means—

[(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

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### § 184. Department of Defense regional centers for security studies

(a) * * *

[(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than February 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the op-

eration of the Department of Defense regional centers for security studies during the preceding fiscal year. The annual report shall include, for each regional center, the following information:

[(1) The status and objectives of the center.

[(2) The budget of the center, including the costs of operating the center.

[(3) A description of the extent of the international participation in the programs of the center, including the costs incurred by the United States for the participation of each foreign nation.

[(4) A description of the foreign gifts and donations, if any, accepted under any of the following provisions of law:

[(A) Section 2611 of this title.

[(B) Section 1306 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2892).

[(C) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2653; 10 U.S.C. 113 note).]

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## CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

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### SUBCHAPTER I—COMMON SUPPLY AND SERVICE ACTIVITIES

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**§ 193. Combat support agencies: oversight**

(a) * * *

* * * * * * *

(d) REVIEW OF NATIONAL SECURITY AGENCY AND [NATIONAL IMAGERY AND MAPPING AGENCY] *NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY*.—(1) Subsections (a), (b), and (c) shall apply to the National Security Agency and the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*, but only with respect to combat support functions that the agencies perform for the Department of Defense.

(2) The Secretary, after consulting with the Director of Central Intelligence, shall establish policies and procedures with respect to the application of subsections (a), (b), and (c) to the National Security Agency and the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

(e) COMBAT SUPPORT CAPABILITIES OF DIA, NSA, AND [NIMA] *NGA*.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall develop and implement, as they may determine to be necessary, policies and programs to correct such deficiencies as the Chairman of the Joint Chiefs of Staff and other officials of the Department of Defense may identify in the capabilities of the Defense Intelligence Agency, the National Security Agency, and the [National Imagery and Mapping Agency] *Na-*

*tional Geospatial-Intelligence Agency* to accomplish assigned missions in support of military combat operations.

(f) DEFINITION OF COMBAT SUPPORT AGENCY.—In this section, the term "combat support agency" means any of the following Defense Agencies:

(1) * * *

* * * * * * *

(4) The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

* * * * * * *

**§ 196. Department of Defense Test Resource Management Center**

(a) * * *

(b) DIRECTOR AND DEPUTY DIRECTOR.—(1) At the head of the Center shall be a Director, selected by the Secretary from among commissioned officers of the armed forces on active duty *or from among senior civilian officials or employees of the Department of Defense who have substantial experience in the field of test and evaluation*. The Director, while so serving, holds the grade of lieutenant general or, in the case of an officer of the Navy, [vice admiral] *the grade of vice admiral, or, in the case of a civilian official or employee, an equivalent level*.

* * * * * * *

SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS

* * * * * * *

**§ 201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance**

(a) * * *

(b) CONCURRENCE IN APPOINTMENT.—(1) * * *

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

(A) * * *

* * * * * * *

(C) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

(c) PERFORMANCE EVALUATIONS.—(1) * * *

(2) The positions referred to in paragraph (1) are the following:

(A) * * *

* * * * * * *

(C) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

* * * * * * *

**CHAPTER 9—DEFENSE BUDGET MATTERS**

Sec.

221. Future-years defense program: submission to Congress; consistency in budgeting.

* * * * * * *

[228. Monthly reports on allocation of funds within operation and maintenance budget subactivities.]

*228. Quarterly reports on allocation of funds within operation and maintenance budget subactivities.*

* * * * * * *

## § 223. Ballistic missile defense programs: program elements

(a) PROGRAM ELEMENTS SPECIFIED *BY PRESIDENT*.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Missile Defense Agency shall be set forth in accordance with [program elements governing functional areas as follows:

[(1) Technology.

[(2) Ballistic Missile Defense System.

[(3) Terminal Defense Segment.

[(4) Midcourse Defense Segment.

[(5) Boost Defense Segment.

[(6) Sensors Segment.] *such program elements as the President may specify.*

(b) SEPARATE PROGRAM ELEMENTS FOR PROGRAMS ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT.—(1) * * *

(2) In this subsection, the term "engineering and manufacturing development" [means the development phase whose] *means the period in the course of an acquisition program during which the* primary objectives are to—

(A) * * *

* * * * * * *

(c) MANAGEMENT AND SUPPORT.—The amount requested [for each program element specified in subsection (a)] *for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a)* shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

## § 224. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation

(a) * * *

* * * * * * *

[(f) CONGRESSIONAL DEFENSE COMMITTEES.—In this section, the term "congressional defense committees" means the following:

[(1) The Committee on Armed Services and the Committee on Appropriations of the Senate.

[(2) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

## § 226. Scoring of outlays

(a) ANNUAL OMB/CBO REPORT.—Not later than [December] *January* 15 of each year, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office

shall submit to the Speaker of the House of Representatives and the Committees on Armed Services, Appropriations, and the Budget of the Senate a joint report containing an agreed resolution of all differences between—

(1) the technical assumptions to be used by the Office of Management and Budget in preparing estimates with respect to all accounts in major functional category 050 (National Defense) for the budget to be submitted to Congress [in the following year] *in that year* pursuant to section 1105 of title 31; and

(2) the technical assumptions to be used by the Congressional Budget Office in preparing estimates with respect to those accounts for that budget.

* * * * * * *

**[§ 228. Monthly reports on allocation of funds within operation and maintenance budget subactivities]**

***§ 228. Quarterly reports on allocation of funds within operation and maintenance budget subactivities***

(a) [MONTHLY] *QUARTERLY* REPORT.—The Secretary of Defense shall submit to the congressional defense committees a [monthly] *quarterly* report on the allocation of appropriations to O&M budget activities and to the subactivities of those budget activities. Each such report shall be submitted not later than 60 days after the end of the [month] *fiscal-year quarter* to which the report pertains.

* * * * * * *

(c) IDENTIFICATION OF CERTAIN FLUCTUATIONS.—(1) If, in the report under this section for a [month] *quarter* of a fiscal year after the first [month] *quarter* of that fiscal year, an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the report for the first [month] *quarter* of that fiscal year, the Secretary shall include in the report notice of that difference.

(2) If, in the report under this section for a [month] *quarter* of a fiscal year after a [month] *quarter* for which the report under this section includes a notice under paragraph (1), an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the most recent report that includes a notice under paragraph (1) or this paragraph, the Secretary shall include in the report notice of that difference.

* * * * * * *

(e) [DEFINITIONS.—In this section:]

[(1) The term] *O&M BUDGET ACTIVITY DEFINED.—In this section, the term* "O&M budget activity" means a budget activity within an operation and maintenance appropriation of the Department of Defense for a fiscal year.

[(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.]

**§ 229. Programs for combating terrorism: display of budget information**

(a) * * *

* * * * * * *

[(f) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this section, the term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

* * * * * * *

## CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.
401. Humanitarian and civic assistance provided in conjunction with military operations.

* * * * * * *

**§ 401. Humanitarian and civic assistance provided in conjunction with military operations**

(a) * * *

* * * * * * *

[(d) The Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report—

[(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

[(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

[(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.]

* * * * * * *

**§ 402. Transportation of humanitarian relief supplies to foreign countries**

(a) * * *

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) * * *

* * * * * * *

(C) there is a legitimate humanitarian need for such supplies by the people *or entity* for whom they are intended;

* * * * * * *

(E) adequate arrangements have been made for the distribution *or use* of such supplies in the destination country.

* * * * * * *

(3) It shall be the responsibility of the [donor to ensure that supplies to be transported under this section] *entity requesting the transport of supplies under this section to ensure that the supplies* are suitable for transport.

* * * * * * *

*(d) RESPONSE TO ENVIRONMENTAL EMERGENCIES.—The authority of the Secretary of Defense to transport humanitarian relief supplies under this section includes the authority to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment.*

[(d)] *(e)* Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

* * * * * * *

**§ 404. Foreign disaster assistance**

(a) IN GENERAL.—The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives *or serious harm to the environment*.

* * * * * * *

(c) NOTIFICATION REQUIRED.—Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) * * *

(2) The threat to human lives *or the environment* presented by the disaster.

* * * * * * *

## CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

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### SUBCHAPTER I—GENERAL MATTERS

Sec.
421. Funds for foreign cryptologic support.

* * * * * * *

[424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency.]

*424. Disclosure of organizational and personnel information: exemption for specified intelligence agencies.*

* * * * * * *

*426. Personal services contracts: authority and limitations.*
*426. Counterintelligence polygraph program.*

* * * * * * *

**[§ 424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency]**

***§ 424. Disclosure of organizational and personnel information: exemption for specified intelligence agencies***

(a) * * *

* * * * * * *

(b) COVERED ORGANIZATIONS.—This section applies to the following organizations of the Department of Defense:

(1) * * *

* * * * * * *

(3) The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

* * * * * * *

**§ 425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies**

(a) PROHIBITION.—Except with the written permission of both the Secretary of Defense and the Director of Central Intelligence, no person may knowingly use, in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary and the Director, any of the following (or any colorable imitation thereof):

(1) * * *

* * * * * * *

*(5) The words "National Geospatial-Intelligence Agency", the initials "NGA," or the seal of the National Geospatial-Intelligence Agency.*

* * * * * * *

***§ 426. Personal services contracts: authority and limitations***

*(a) PERSONAL SERVICES.—(1) The Secretary of Defense may, notwithstanding section 3109 of title 5, enter into personal services contracts in the United States if the personal services directly support the mission of a defense intelligence component or counter-intelligence organization.*

*(2) The contracting officer for a personal services contract shall be responsible for ensuring that a personal services contract is the appropriate vehicle for carrying out the purpose of the contract.*

*(b) DEFINITION.—In this section, the term "defense intelligence component" means a component of the Department of Defense that is an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).*

***§ 426. 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 (c), 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 4.4(a) of Executive Order 12958 (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.*

*(3) A person assigned or detailed to the Department of Defense.*

*(4) An applicant for a position in the Department of Defense.*

*(c) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply to the following persons:*

*(1) 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) A person who is—*

*(A) 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) A person assigned to a space where sensitive cryptographic information is produced, processed, or stored.*

*(4) 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.*

*(d) OVERSIGHT.—(1) The Secretary shall establish a process to monitor responsible and effective application of polygraphs within the Department of Defense.*

*(2) The Secretary shall make information on the use of polygraphs within the Department of Defense available to the congressional defense committees.*

*(e) POLYGRAPH RESEARCH PROGRAM.—The Secretary of Defense shall carry out a continuing research program to support the polygraph 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-countermeasures; and*

*(3) developmental research on polygraph techniques, instrumentation, and analytic methods.*

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

* * * * * * *

**§ 437. Congressional oversight**

(a) * * *

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter. **[**The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.**]**

**[**(c) ANNUAL REPORT.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report)—

**[**(1) a description of any exercise of the authority provided by section 433(b) of this title;

**[**(2) a description of any expenditure of funds made pursuant to this subchapter (whether from appropriated or non-appropriated funds); and

**[**(3) a description of any actions taken with respect to audits conducted pursuant to section 432 of this title to implement recommendations or correct deficiencies identified in such audits.**]**

* * * * * * *

**[CHAPTER 22—NATIONAL IMAGERY AND MAPPING AGENCY]**

***CHAPTER 22—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY***

* * * * * * *

SUBCHAPTER I—MISSIONS AND AUTHORITY

* * * * * * *

**§ 441. Establishment**

(a) ESTABLISHMENT.—The **[**National Imagery and Mapping Agency**]** *National Geospatial-Intelligence Agency* is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* is the head of the agency.

* * * * * * *

**§ 442. Missions**

(a) NATIONAL SECURITY MISSIONS.—(1) The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* shall, in support of the national security objectives of the United States, provide *geospatial intelligence consisting of* the following:

(A) * * *

* * * * * * *

(2) [Imagery, intelligence, and information] *Geospatial intelligence* provided in carrying out paragraph (1) shall be timely, relevant, and accurate.

* * * * * * *

(b) NAVIGATION INFORMATION.—The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of Defense, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.

(c) MAPS, CHARTS, ETC.—The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* shall prepare and distribute maps, charts, books, and geodetic products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* also has national missions as specified in [section 120(a) of the National Security Act of 1947] *section 110(a) of the National Security Act of 1947 (50 U.S.C. 404e(a))*.

(e) SYSTEMS.—The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

(1) * * *

* * * * * * *

**§ 443. Imagery intelligence and geospatial information: support for foreign countries**

(a) USE OF APPROPRIATED FUNDS.—The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* may use appropriated funds available to the National Imagery and Mapping Agency to provide foreign countries with imagery intelligence and geospatial information support.

(b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—The Director may use funds other than appropriated funds to provide foreign countries with imagery intelligence and geospatial information support, notwithstanding provisions of law relating to the expenditure of funds of the United States, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* for a purpose for which Congress had previously denied funds;

* * * * * * *

**§ 444. Support from Central Intelligence Agency**

(a) SUPPORT AUTHORIZED.—The Director of Central Intelligence may provide support in accordance with this section to the Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*. The Director of the National Imagery and Mapping Agency may accept support provided under this section.

(b) ADMINISTRATIVE AND CONTRACT SERVICES.—(1) In furtherance of the national intelligence effort, the Director of Central Intelligence may provide administrative and contract services to the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* as if that agency were an organizational element of the Central Intelligence Agency.

(2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o), an installation of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency.

* * * * * * *

(c) DETAIL OF PERSONNEL.—The Director of Central Intelligence may detail personnel of the Central Intelligence Agency indefinitely to the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* without regard to any limitation on the duration of interagency details of Federal Government personnel.

* * * * * * *

(e) AUTHORITY TO TRANSFER FUNDS.—(1) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* may transfer funds available for that agency to the Director of Central Intelligence for the Central Intelligence Agency.

(2) The Director of Central Intelligence—

(A) * * *

(B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), to provide administrative and contract services or detail personnel to the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* under this section.

* * * * * * *

**§ 453. Sale of maps, charts, and navigational publications: prices; use of proceeds**

(a) * * *

(b) USE OF PROCEEDS TO PAY FOREIGN LICENSING FEES.—(1) The Secretary of Defense may pay any [NIMA] *NGA* foreign data

acquisition fee out of the proceeds of the sale of maps, charts, and other publications of the Agency, and those proceeds are hereby made available for that purpose.

(2) In this subsection, the term "[NIMA] *NGA* foreign data acquisition fee" means any licensing or other fee imposed by a foreign country or international organization for the acquisition or use of data or products by the [National Imagery and Mapping Agency] *National Geospacial Intelligence Agency*.

* * * * * * *

SUBCHAPTER IV—DEFINITIONS

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**§ 467. Definitions**

In this chapter:

(1) * * *

* * * * * * *

*(5) The term "geospatial intelligence" means the exploitation and analysis of imagery and geospatial information to describe, assess, and visually depict physical features and geographically referenced activities on the earth. Geospatial intelligence consists of imagery, imagery intelligence, and geospatial information.*

* * * * * * *

## CHAPTER 23—MISCELLANEOUS STUDIES AND REPORTS

Sec.
480. Reports to Congress: submission in electronic form.
* * * * * * *
[484. Annual report on aircraft inventory.]

* * * * * * *

**[§ 484. Annual report on aircraft inventory**

[(a) ANNUAL REPORT.—The Under Secretary of Defense (Comptroller) shall submit to Congress each year a report on the aircraft in the inventory of the Department of Defense. The Under Secretary shall submit the report when the President submits the budget to Congress under section 1105(a) of title 31.

[(b) CONTENT.—The report shall set forth, in accordance with subsection (c), the following information:

[(1) The total number of aircraft in the inventory.

[(2) The total number of the aircraft in the inventory that are active, stated in the following categories (with appropriate subcategories for mission aircraft, training aircraft, dedicated test aircraft, and other aircraft):

[(A) Primary aircraft.

[(B) Backup aircraft.

[(C) Attrition and reconstitution reserve aircraft.

[(3) The total number of the aircraft in the inventory that are inactive, stated in the following categories:

[(A) Bailment aircraft.

[(B) Drone aircraft.

[(C) Aircraft for sale or other transfer to foreign governments.

[(D) Leased or loaned aircraft.

[(E) Aircraft for maintenance training.

[(F) Aircraft for reclamation.

[(G) Aircraft in storage.

[(4) The aircraft inventory requirements approved by the Joint Chiefs of Staff.

[(c) DISPLAY OF INFORMATION.—The report shall specify the information required by subsection (b) separately for the active component of each armed force and for each reserve component of each armed force and, within the information set forth for each such component, shall specify the information separately for each type, model, and series of aircraft provided for in the future-years defense program submitted to Congress.]

* * * * * * *

**§ 487. Unit operations tempo and personnel tempo: annual report**

(a) * * *

(b) SPECIFIC REQUIREMENTS.—(1) * * *

* * * * * * *

[(5) For each of the armed forces, the description shall indicate the average number of days a member of that armed force was deployed away from the member's home station during the period covered by the report as compared to recent previous years for which such information is available.]

*(5) For each of the armed forces, the description shall indicate, for the period covered by the report—*

*(A) the number of members who received the high-deployment allowance under section 436 of title 37;*

*(B) the number of members who received each rate of allowance paid;*

*(C) the number of members who received the allowance for one month, for two months, for three months, for four months, for five months, for six months, and for more than six months; and*

*(D) the total amount spent on the allowance.*

* * * * * * *

# PART II—PERSONNEL

* * * * * * *

## CHAPTER 31—ENLISTMENTS

Sec.
501. Definition.

* * * * * * *

[520c. Recruiting functions: use of funds.]
*520c. Recruiting functions: provision of meals and refreshments.*

* * * * * * *

**§ 503. Enlistments: recruiting campaigns; compilation of directory information**

(a) * * *

* * * * * * *

(c) ACCESS TO SECONDARY SCHOOLS.—(1) * * *

* * * * * * *

(5) The requirements of this subsection do not [apply to—

[(A) a local educational agency with respect to access to secondary school students or access to directory information concerning such students for any period during which there is in effect a policy of that agency, established by majority vote of the governing body of the agency, to deny recruiting access to those students or to that directory information, respectively; or

[(B) a private secondary school which] *apply to a private secondary school that* maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term "local educational agency" means—

(i) a local educational agency, within the meaning of that term in section [14101] *9101* of the Elementary and Secondary Education Act of 1965 (20 U.S.C. [8801] *7801*); and

* * * * * * *

**[§ 520c. Recruiting functions: use of funds]**

***§ 520c. Recruiting functions: provision of meals and refreshments***

[(a) PROVISION OF MEALS AND REFRESHMENTS.—]Under regulations prescribed by the Secretary concerned, funds appropriated to the Department of Defense for recruitment of military personnel may be expended for small meals and refreshments during recruiting functions for the following persons:

(1) Persons who have enlisted under the Delayed Entry Program authorized by section 513 of this title.

(2) Persons who are objects of armed forces recruiting efforts.

(3) Persons whose assistance in recruiting efforts of the military departments is determined to be influential by the Secretary concerned.

(4) Members of the armed forces and Federal employees when attending recruiting functions in accordance with a requirement to do so.

(5) Other persons whose presence at recruiting functions will contribute to recruiting efforts.

[(b) ANNUAL REPORT.—Not later than February 1 of each of the years 1998 through 2002, the Secretary of Defense shall submit to Congress a report on the extent to which the authority under

subsection (a) was exercised during the fiscal year ending in the preceding year.]

* * * * * * *

## CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

* * * * * * *

### SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

* * * * * * *

### § 630. Discharge of commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) * * *

(2) shall, unless the officer has been promoted, discharge any officer described in [clause] *paragraph* (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

* * * * * * *

### § 631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) * * *

* * * * * * *

(3) if on the date on which he is to be discharged under [clause] *paragraph* (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

* * * * * * *

**§ 632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy**

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of captain or major, and each officer of the Navy on the active-duty list who holds the grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) *except as provided in paragraph (3) and in subsection (c),* be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

* * * * * * *

(3) if on the date on which he is to be discharged under [clause] *paragraph* (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

* * * * * * *

*(c)(1) If a health professions officer described in paragraph (2) is subject to discharge under subsection (a)(1) and, as of the date on which the officer is to be discharged under that paragraph, the officer has not completed a period of active duty service obligation that the officer incurred under section 2005, 2114, 2123, or 2603 of this title, the officer shall be retained on active duty until completion of such active duty service obligation, and then be discharged under that subsection, unless sooner retired or discharged under another provision of law.*

*(2) The Secretary concerned may waive the applicability of paragraph (1) to any officer if the Secretary determines that completion of the active duty service obligation of that officer is not in the best interest of the service.*

*(3) This subsection applies to a medical officer or dental officer or an officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense).*

* * * * * * *

## CHAPTER 39—ACTIVE DUTY

* * * * * * *

**§ 691. Permanent end strength levels to support two major regional contingencies**

(a) * * *

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) For the Army, [480,000] *482,375*.

* * * * * * *

(4) For the Air Force, [359,000] *361,268*.

* * * * * * *

## CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.

* * * * * * *

[705. Rest and recuperation absence: qualified enlisted members extending duty at designated locations overseas.]
*705. Rest and recuperative absence for qualified members extending duty at designated locations overseas.*

* * * * * * *

### § 701. Entitlement and accumulation

(a) * * *

* * * * * * *

[(f)(1) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.]

*(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose any accumulated leave in excess of 60 days at the end of the fiscal year, to retain an accumulated total of 120 days leave.*

*(B) This subsection applies to a member who serves on active duty for a continuous period of at least 120 days—*

*(i) in an area in which the member is entitled to special pay under section 310(a) of title 37; or*

*(ii) while assigned to a deployable ship or mobile unit or to other duty comparable to that specified in clause (i) that is designated for the purpose of this subsection.*

*(C) Except as provided in paragraph (2), Leave in excess of 60 days accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.*

* * * * * * *

**[§ 705. Rest and recuperation absence: qualified enlisted members extending duty at designated locations overseas]**

***§ 705. Rest and recuperation absence: qualified members extending duty at designated locations overseas***

(a) Under regulations prescribed by the Secretary concerned, [an enlisted member] *a member* of an armed force who—

(1) * * *

* * * * * * *

## CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

* * * * * * *

SUBCHAPTER X—PUNITIVE ARTICLES

* * * * * * *

**§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel**

(a) Any person subject to this chapter who—

(1) * * *

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is [in excess of] *at, or in excess of,* the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) * * *

* * * * * * *

(4) In this subsection:

(A) The term "blood alcohol content limit" means the [maximum permissible alcohol concentration in a person's blood or breath for purposes of operation or control of a vehicle, aircraft, or vessel.] *amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.*

* * * * * * *

## CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

* * * * * * *

**§ 973. Duties: officers on active duty; performance of civil functions restricted**

(a) * * *

(b)(1) * * *

* * * * * * *

(3)*(A)* Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

*(B) The prohibition in subparagraph (A) does not apply to the functions of a civil office held by election, in the case of an officer to whom this subsection applies by reason of subparagraph (B) or (C) of paragraph (1).*

* * * * * * *

### § 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) * * *

* * * * * * *

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education [and to Congress]; and

* * * * * * *

## CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.
991. Management of deployments of members.
*992. Requirement of exemplary conduct: commanding officers and others in authority.*

* * * * * * *

### § 991. Management of deployments of members

[(a) GENERAL OR FLAG OFFICER RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed, during any period when the member is a high-deployment days member, by the officer in the chain of command of that member who is the lowest-ranking general or flag officer in that chain of command. That officer shall ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 365 days would exceed 220. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—

[(A) in the case of a member who is assigned to a combatant command in a position under the operational control of the officer in that combatant command who is the service component commander for the members of that member's armed force in that combatant command, by that officer; and

[(B) in the case of a member not assigned as described in subparagraph (A), by the service chief of that member's armed force (or, if so designated by that service chief, by an officer of the same armed force on active duty who is in the grade of general or admiral or who is the personnel chief for that armed force).

[(2) In this section, the term "high-deployment days member" means a member who has been deployed 182 days or more out of the preceding 365 days.

[(3) In paragraph (1)(B), the term "service chief" means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.]

*(a) SERVICE AND GENERAL OR FLAG OFFICER RESPONSIBILITIES.—(1) Subject to paragraph (3), the deployment (or potential deployment) of members of the armed forces shall be managed to ensure that a member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 730 days would exceed the high-deployment threshold.*

*(2) In this subsection, the term "high-deployment threshold" means—*

*(A) 400 days; or*

*(B) a lower number of days prescribed by the Secretary of Defense.*

*(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to—*

*(A) a civilian officer of the Department of Defense appointed by the President, by and with the advise and consent of the Senate, or a member of the Senior Executive Service; or*

*(B) a general or flag officer in that member's chain of command (including an officer in the grade of colonel, or in the case of the Navy, captain, serving an in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half)).*

* * * * * * *

### *§ 992. Requirement of exemplary conduct: commanding officers and others in authority*

*All commanding officers and others in authority in the Department of Defense are required—*

*(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;*

*(2) to be vigilant in inspecting the conduct of all persons who are placed under their command or charge;*

*(3) to guard against and to suppress all dissolute and immoral practices and to correct, according to applicable laws and regulations, all persons who are guilty of them; and*

*(4) to take all necessary and proper measures, under the laws, regulations, and customs applicable to the armed forces, to promote and safeguard the morale, the physical well-being, and the general welfare of all under their command or charge.*

* * * * * * *

## CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1031. Administration of oath.

* * * * * * *

[1051a. Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses.]
*1051a. Foreign officers: administrative services and support; travel, subsistence, and other personal expenses.*
*1051b. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance.*

* * * * * * *

**[§ 1051a. Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses]**

***§ 1051a. Foreign officers: administrative services and support; travel, subsistence, and other personal expenses***

(a) [AUTHORITY] *ADMINISTRATIVE SERVICES AND SUPPORT.*—The Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of another nation [involved in a coalition with the United States] while the liaison officer is assigned [temporarily] to the headquarters of a combatant command, component command, or subordinate operational command of the United States [in connection with the planning for, or conduct of, a coalition operation].

(b) TRAVEL AND SUBSISTENCE EXPENSES.—[(1)] The Secretary may pay the [expenses specified in paragraph (2)] *travel, subsistence, and similar personal expenses* of a liaison officer of a developing [country in connection with the assignment of that officer to the headquarters of a combatant command as described in subsection (a)] *nation involved in a coalition while the liaison officer is assigned temporarily to a headquarters described in subsection (a) in connection with the planning for, or conduct of, a coalition operation*, if the assignment is requested by the commander of the combatant command.

[(2) Expenses of a liaison officer that may be paid under paragraph (1) in connection with an assignment described in that paragraph are the following:

[(A) Travel and subsistence expenses.

[(B) Personal expenses directly necessary to carry out the duties of that officer in connection with that assignment.]

(c) REIMBURSEMENT.—To the extent that the Secretary determines appropriate, the Secretary may provide the services and support authorized [by] *under* subsection (a) and the expenses authorized by subsection (b) with or without reimbursement from (or on behalf of) the recipients.

* * * * * * *

***§ 1051b. Bilateral or regional cooperation programs: awards and mementos funds to recognize superior noncombat achievements or performance***

*(a) GENERAL AUTHORITY.—The Secretary of Defense may present awards and mementos purchased with funds appropriated for operation and maintenance of the armed forces to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.*

*(b) ACTIVITIES THAT MAY BE RECOGNIZED.—Activities that may be recognized under subsection (a) include superior achievement or performance that—*

*(1) plays a crucial role in shaping the international security environment in ways that protect and promote United States interests;*

*(2) supports or enhances United States overseas presence and peacetime engagement activities, including defense cooperation initiatives, security assistance training and programs, and training and exercises with the armed forces;*

*(3) helps to deter aggression and coercion, build coalitions, and promote regional stability; or*

*(4) serves as a role model for appropriate conduct by military forces in emerging democracies.*

*(c) LIMITATION.—Expenditures for the purchase or production of mementos for award under this section may not exceed the "minimal value" established in accordance with section 7342(a)(5) of title 5.*

* * * * * * *

**§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits**

(a) * * *

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days—

(1) * * *

(2) who is administratively separated*, voluntarily or involuntarily,* from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

* * * * * * *

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, [shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and] *shall commence—*

*(i) as of the date the court martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or*

*(ii) if there is a pretrial agreement that includes disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes an unsuspended*

*dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances;*

* * * * * * *

(2) Transitional compensation with respect to a member shall be paid for a period of 36 months[, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

[(A) the unserved portion of the member's period of obligated active duty service; or

[(B) 12 months].

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction by a court-martial for a dependent-abuse offense and each such [punishment applicable to the member under the sentence is remitted, set aside, or mitigated] *conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated* to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

* * * * * * *

*(m) ADDITIONAL ELIGIBILITY.—The Secretary concerned, under regulations prescribed under subsection (k), may authorize eligibility for benefits under this section to dependents of a member or former member of the armed forces not covered by subsection (b) if the Secretary concerned determines that there are extenuating circumstances such that granting benefits under this section is consistent with the intent of this section.*

### § 1060. Military service of retired members with newly democratic nations: consent of Congress

(a) * * *

* * * * * * *

[(d) REPORTS TO CONGRESSIONAL COMMITTEES.—The Secretary concerned and the Secretary of State shall notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives of each approval under subsection (b) and each determination under subsection (c).]

* * * * * * *

## CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.

* * * * * * *

[1063. Use of commissary stores: members of Ready Reserve.

[1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.
[1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60.
[1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents.]
*1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60.*
*1064. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.*

* * * * * * *

**[§ 1063. Use of commissary stores: members of Ready Reserve**

[(a) ELIGIBILITY OF MEMBERS WITH 50 OR MORE CREDITABLE POINTS.—A member of the Ready Reserve who satisfactorily completes 50 or more points creditable under section 12732(a)(2) of this title in a calendar year shall be eligible to use commissary stores of the Department of Defense. The Secretary concerned shall authorize the member to have 24 days of eligibility for any calendar year that the member qualifies for eligibility under this subsection.

[(b) ELIGIBILITY OF NEW MEMBERS.—(1) The Secretary concerned shall authorize a new member of the Ready Reserve to use commissary stores of the Department of Defense for a number of days accruing at the rate of two days for each month in which the member participates satisfactorily in training required under section 10147(a)(1) of this title or section 502(a) of title 32, as the case may be.

[(2) For the purposes of paragraph (1), a person shall be considered a new member of the Ready Reserve upon becoming a member and continuing without a break in the membership until the earlier of—

[(A) the date on which the member becomes eligible to use commissary stores under subsection (a); or

[(B) December 31 of the first calendar year in which the membership has been continuous for the entire year.

[(3) A new member may not be authorized under this subsection to use commissary stores for more than 24 days for any calendar year.

[(c) EFFECT OF COMPENSATION OR TYPE OF DUTY.—Subsections (a) and (b) shall apply without regard to whether, during the calendar year, the member receives compensation for the duty or training performed by the member or performs active duty for training.

[(d) REGULATIONS.—The Secretary concerned shall prescribe regulations, subject to the approval of the Secretary of Defense, to carry out this section. The regulations shall specify the required documentation of satisfactory participation in training for the purposes of subsection (b).

**[§ 1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60**

[Under regulations prescribed by the Secretary of Defense, a person who would be eligible for retired pay under chapter 1223 of this title but for the fact that the person is under 60 years of age

shall be authorized to use commissary stores of the Department of Defense for 24 days each calendar year.]

**[§ 1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents]**

***§ 1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60***

(a) MEMBERS OF THE SELECTED RESERVE.—A member of the Selected Reserve in good standing (as determined by the Secretary concerned) shall be permitted to use *commissary stores and* MWR retail facilities on the same basis as members on active duty.

(b) MEMBERS OF READY RESERVE NOT IN SELECTED RESERVE.—Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use *commissary stores and* MWR retail facilities on the same basis as members serving on active duty.

(c) RESERVE RETIREES UNDER AGE 60.—A member or former member of a reserve component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use *commissary stores and* MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) DEPENDENTS.—(1) Dependents of a member who is permitted under subsection (a) or (b) to use *commissary stores and* MWR retail facilities shall be permitted to use *stores and* such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use *commissary stores and* MWR retail facilities shall be permitted to use *stores and* such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

**[§ 1063a.] *§ 1064.* Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency**

(a) * * *

* * * * * * *

(c) DEFINITIONS.—In this section:

(1) * * *

(2) MWR RETAIL FACILITIES.—The term "MWR retail facilities" has the meaning given that term in [section 1065(e)] *section 1063(e)* of this title.

* * * * * * *

## CHAPTER 55—MEDICAL AND DENTAL CARE

* * * * * * *

**§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days**

(a) * * *

* * * * * * *

*(f)(1) The Department of Defense may provide medical and dental screening and care to members of the Selected Reserve who are assigned to a unit that has been alerted that the unit will be mobilized for active duty in support of an operational mission or contingency operation, during a national emergency, or in a time of war.*

*(2) The medical and dental screening and care that may be provided under this subsection is screening and care necessary to ensure that a member meets the medical and dental standards for required deployment.*

*(3) The services provided under this subsection shall be provided to a member at no cost to the member and at any time after the unit to which the member is assigned is alerted or otherwise notified that the unit will be mobilized.*

* * * * * * *

**§ 1074g. Pharmacy benefits program**

(a) * * *

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services **[**facilities, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the national mail-order pharmacy program, providers in facilities of the uniformed services, and TRICARE network providers.**]** *facilities and representatives of providers in facilities of the uniformed services.* Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (g).

* * * * * * *

(c) ADVISORY PANEL.—(1) * * *

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that **[**represent nongovernmental**]** *represent—*

*(A) nongovernmental* organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries**[**.**]***;*

*(B) contractors responsible for the TRICARE retail pharmacy program;*

*(C) contractors responsible for the national mail-order pharmacy program; and*

*(D) TRICARE network providers.*

* * * * * * *

**§ 1091. Personal services contracts**

(a) AUTHORITY.—(1) * * *

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary. [The Secretary may not enter into a contract under this paragraph after December 31, 2003.]

* * * * * * *

**§ 1107. Notice of use of an investigational new drug or a drug unapproved for its applied use**

(a) * * *

* * * * * * *

(f) LIMITATION AND WAIVER.—(1) * * *

* * * * * * *

(4) In this subsection:

(A) * * *

* * * * * * *

[(C) The term "congressional defense committee" means each of the following:

[(i) The Committee on Armed Services and the Committee on Appropriations of the Senate.

[(ii) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

* * * * * * *

**CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND**

* * * * * * *

**§ 1115. Determination of contributions to the Fund**

(a) * * *

* * * * * * *

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) * * *

* * * * * * *

Such single level dollar amounts shall be used for the purposes of subsection (b) and section 1116(a) of this title. *In determining single level dollar amounts under subparagraphs (A) and (B) of this paragraph, the Secretary of Defense may determine a separate single level dollar amount under either or both subparagraphs for any*

*participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.*

* * * * * * *

## CHAPTER 57—DECORATIONS AND AWARDS

* * * * * * *

### § 1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and recommendation

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration and [the other determinations necessary to comply with subsection (b)] *respond with a detailed description of the rationale supporting the determination*.

[(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting member of Congress notice in writing of one of the following:

[(1) The award or presentation of the decoration does not warrant approval on the merits.

[(2) The award or presentation of the decoration warrants approval and a waiver by law of time restrictions prescribed by law is recommended.

[(3) The award or presentation of the decoration warrants approval on the merits and has been approved as an exception to policy.

[(4) The award or presentation of the decoration warrants approval on the merits, but a waiver of the time restrictions prescribed by law or policy is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.]

* * * * * * *

## CHAPTER 69—RETIRED GRADE

* * * * * * *

### § 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, [except as provided in para-

graph (2)] *subject to paragraphs (2) and (3)*, be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned[, for not less than six months].

[(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the period beginning on October 1, 2002, and ending on December 31, 2003.

[(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

[(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

[(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

[(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.]

*(2) In order to be eligible for voluntary retirement under this title in a grade below the grade of lieutenant colonel or commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than six months.*

*(3)(A) In order to be eligible for voluntary retirement in a grade above major or lieutenant commander and below brigadier general or rear admiral (lower half), a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period not less than two years.*

*(B) In order to be eligible for voluntary retirement in a grade above colonel or captain, in the case of the Navy, a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than one year.*

*(C) An officer in a grade above major general or rear admiral may be retired in the highest grade in which the officer served on active duty satisfactorily for not less than one year, upon approval by the Secretary of the military department concerned and concurrence by the Secretary of Defense. The function of the Secretary of Defense under the preceding sentence may only be delegated to a civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.*

*(D) The President may waive subparagraph (A), (B) or (C) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.*

**[**(3)**]** *(4)* A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) *or whose service on active duty in that grade was not determined to be satisfactory by the Secretary of the military department concerned* shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

**[**(c) OFFICERS IN O–9 AND O–10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

**[**(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

**[**(A) while the officer is under investigation for alleged misconduct; or

**[**(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

**[**(3)(A) The Secretary of Defense may delegate authority to make a certification with respect to an officer under paragraph (1) only to the Under Secretary of Defense for Personnel and Readiness or the Deputy Under Secretary of Defense for Personnel and Readiness.

**[**(B) If authority is delegated under subparagraph (A) and, in the course of consideration of an officer for a certification under paragraph (1), the Under Secretary or (if such authority is delegated to both the Under and Deputy Under Secretary) the Deputy Under Secretary makes a determination described in subparagraph (C) with respect to that officer, the Under Secretary or Deputy Under Secretary, as the case may be, may not exercise the delegated authority in that case, but shall refer the matter to the Sec-

retary of Defense, who shall personally determine whether to issue a certification under paragraph (1) with respect to that officer.

[(C) A determination referred to in subparagraph (B) is a determination that there is potentially adverse information concerning an officer and that such information has not previously been submitted to the Senate in connection with the consideration by the Senate of a nomination of that officer for an appointment for which the advice and consent of the Senate is required.]

[(d)] *(c)* RESERVE OFFICERS.—(1) * * *

* * * * * * *

(3)(A)*(i)* In order to be credited with satisfactory service in an officer grade above major or lieutenant commander *and below brigadier general or rear admiral (lower half)*, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years*, except that the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period not less than two years*.

*(ii) In order to be credited with satisfactory service in a grade above colonel or captain, in the case of the Navy, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in active status, or in a retired status on active duty, for not less than one year.*

*(iii) An officer covered by paragraph (1) who is in a grade above the grade of major general or rear admiral may be retired in the highest grade in which the officer served satisfactorily for not less than one year, upon approval by the Secretary of the military department concerned and concurrence by the Secretary of Defense. The function of the Secretary of Defense under the preceding sentence may only be delegated to a civilian official in the Office of the Secretary of Defense appointed by the president, by and with the advice and consent of the Senate.*

* * * * * * *

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A)*(i)* as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A)*(i)* as having served in that grade. The period of the

service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

**[**(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.**]**

* * * * * * *

**[**(5)(A) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than 2 years in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003.

**[**(B) In the case of a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under paragraph (1), authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that person only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

**[**(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

**[**(6) The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under paragraph (5) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

**[**(e) ADVANCE NOTICE TO CONGRESSIONAL COMMITTEES.—(1) In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of authority under paragraph (2) of subsection (a) to reduce the three-year service-in-grade requirement otherwise applicable under that paragraph, the Secretary of Defense, before the officer is retired in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under that paragraph with respect to that officer.**]**

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## CHAPTER 71—COMPUTATION OF RETIRED PAY

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**§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay**

(a) * * *

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(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, AND SENIOR ENLISTED MEMBERS.—

(1) * * *

(2) EXCEPTION FOR [MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY] *ENLISTED MEMBERS REDUCED IN GRADE*.—Paragraph (1) does not apply in the case of [a member] *an enlisted member* who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, [1998—

[(A) in the case of an enlisted member, is reduced in] *1998, is reduced in* grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process[; or].

[(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.]

* * * * * * *

**§ 1413. Special compensation for certain severely disabled uniformed services retirees**

(a) * * *

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(g) SOURCE OF FUNDS.—*Payments under this section for a member of the Army, Navy, Air Force, or Marine Corps shall be paid from the Department of Defense Military Retirement Fund.* Payments under this section *for any other member* for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

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**§ 1413a. Special compensation for certain combat-related disabled uniformed services retirees**

(a) * * *

* * * * * * *

(h) SOURCE OF PAYMENTS.—*Payments under this section for a member of the Army, Navy, Air Force, or Marine Corps shall be paid from the Department of Defense Military Retirement Fund.* Payments under this section *for any other member* for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

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## CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

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### § 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps *and payments under section 1413, 1413a, or 1414 of this title paid to such members*;

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### § 1465. Determination of contributions to the Fund

(a) * * *

(b)(1) * * *

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*(3) At the same time that the Secretary of Defense makes the determination required by paragraph (1) for any fiscal year, the Secretary shall determine the amount of the Treasury contribution to be made to the Fund for the next fiscal year under section 1466(b)(2)(D) of this title. That amount shall be determined in the same manner as the determination under paragraph (1) of the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title, except that for purposes of this paragraph the Secretary, in making the calculations required by subparagraphs (A) and (B) of that paragraph, shall use the single level percentages determined under subsection (c)(4), rather than those determined under subsection (c)(1).*

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)*, to be determined without regard to section 1413, 1413a, or 1414 of this title*; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A)*, to be determined without regard to section 1413, 1413a, or 1414 of this title*.

Such single level percentages shall be used for the purposes of subsection (b)*(1)* and section 1466(a) of this title.

* * * * * * *

*(4) Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:*

*(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but based only upon the provisions of section 1413, 1413a, or 1414 of this title (whichever is in effect).*

*(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but based only upon the provisions of section 1413, 1413a, or 1414 of this title (whichever is in effect).*

*Such single level percentages shall be used for the purposes of subsection (b)(3).*

[(4)] *(5)* Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

* * * * * * *

**§ 1466. Payments into the Fund**

(a) * * *

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by [sections 1465(a) and 1465(c)] *sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3)* of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) * * *

* * * * * * *

*(D) The amount for that year determined by the Secretary of Defense under section 1465(b)(3) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of section 1413, 1413a, or 1414 of this title.*

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## CHAPTER 75—DECEASED PERSONNEL

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### SUBCHAPTER II—DEATH BENEFITS

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**§ 1490. Transportation of remains: certain retired members and dependents who die in military medical facilities**

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces [located in the United States], the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place [outside the United States or to a place] further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

* * * * * * *

[(c) In this section:

[(1) The term "United States" includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

[(2) The term "dependent" has the meaning given such term in section 1072(2) of this title.]

*(c) DEFINITION OF DEPENDENT.—In this section, the term "dependent" has the meaning given such term in section 1072(2) of this title.*

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## CHAPTER 79—CORRECTION OF MILITARY RECORDS

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### § 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) * * *

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[(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.]

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## CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

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### § 1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review and recommendation

(a) REVIEW BY SECRETARY CONCERNED.—Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination

as to the merits of approving the posthumous or honorary promotion or appointment and [the other determinations necessary to comply with subsection (b)] *respond with a detailed description of the rationale supporting the determination*.

[(b) NOTICE OF RESULTS OF REVIEW.—Upon making a determination under subsection (a) as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress notice in writing of one of the following:

[(1) The posthumous or honorary promotion or appointment does not warrant approval on the merits.

[(2) The posthumous or honorary promotion or appointment warrants approval and authorization by law for the promotion or appointment is recommended.

[(3) The posthumous or honorary promotion or appointment warrants approval on the merits and has been recommended to the President as an exception to policy.

[(4) The posthumous or honorary promotion or appointment warrants approval on the merits and authorization by law for the promotion or appointment is required but is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.]

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## CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

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### SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

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**§ 1614. Definitions**

In this subchapter:

(1) * * *

(2) The term "intelligence component of the Department of Defense" means any of the following:

(A) * * *

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(C) The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

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### SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.

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*1765. Defense acquisition workforce: limitation.*

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### *§ 1765. Defense acquisition workforce: limitation*

*(a) LIMITATION.—Effective October 1, 2008, the number of defense acquisition and support personnel in the Department of Defense may not exceed 75 percent of the baseline number.*

*(b) PHASED REDUCTION.—The number of defense acquisition and support personnel in the Department of Defense—*

*(1) as of October 1, 2004, may not exceed 95 percent of the baseline number;*

*(2) as of October 1, 2005, may not exceed 90 percent of the baseline number;*

*(3) as of October 1, 2006, may not exceed 85 percent of the baseline number; and*

*(4) as of October 1, 2007, may not exceed 80 percent of the baseline number.*

*(c) BASELINE NUMBER.—In this section, the term "baseline number" means the number of defense acquisition and support personnel in the Department of Defense as of October 1, 2003.*

*(d) DEFENSE ACQUISITION AND SUPPORT PERSONNEL DEFINED.—In this section, the term "defense acquisition and support personnel" means military and civilian personnel (other than civilian personnel who are employed at a maintenance depot) who are assigned to, or employed in, acquisition organizations of the Department of Defense (as specified in Department of Defense Instruction numbered 5000.58 dated January 14, 1992), and any other organizations which the Secretary may determine to have a predominantly acquisition mission.*

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## CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE

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### SUBCHAPTER I—MILITARY FAMILY PROGRAMS

Sec.
1781. Office of Family Policy.

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*1789. Chaplain-led programs: authorized support.*

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### *§ 1789. Chaplain-led programs: authorized support*

*(a) AUTHORITY.—The Secretary of a military department may provide support services described in subsection (b) to support chaplain-led programs to assist members of the armed forces on active duty and their immediate family members, and members of reserve components in an active status and their immediate family members, in building and maintaining a strong family structure.*

*(b) AUTHORIZED SUPPORT SERVICES.—The support services referred to in subsection (a) are costs of transportation, food, lodging, child care, supplies, fees, and training materials for members of the armed forces and their family members while participating in programs referred to in that subsection, including participation at retreats and conferences.*

*(c) IMMEDIATE FAMILY MEMBERS.—In this section, the term "immediate family members", with respect to a member of the armed forces, means—*

*(1) the member's spouse; and*

*(2) any child (as defined in section 1072(6) of this title) of the member who is described in subparagraph (D) of section 1072(2) of this title.*

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# PART III—TRAINING AND EDUCATION

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## CHAPTER 101—TRAINING GENERALLY

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### § 2002. Dependents of members of armed forces: language training

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security, language training may be provided in—

(1) * * *

(2) a facility of the [Foreign Service Institute] *George P. Schultz National Foreign Affairs Training Center* established under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4021(a)); or

* * * * * * *

### § 2010. Participation of developing countries in combined exercises: payment of incremental expenses

(a) * * *

[(b) The Secretary of Defense shall submit to Congress a report each year, not later than March 1, containing—

[(1) a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year; and

[(2) the amounts expended on behalf of each government.]

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## CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2101. Definitions.

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*2103a. Students not eligible for advanced training: commitment to military service.*

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***§ 2103a. Students not eligible for advanced training: commitment to military service***

*(a) A member of the program who has completed successfully the first year of a four-year Senior Reserve Officers' Training Corps course and who is not eligible for advanced training under section 2104 of this title and is not a cadet or midshipman appointed under section 2107 of this title may—*

*(1) contract with the Secretary of the military department concerned, or the Secretary's designated representative, to serve for the period required by the program; and*

*(2) agree in writing to accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and to serve in the armed forces for the period prescribed by the Secretary.*

*(b) A member of the program may enter into a contract and agreement under this section (and receive a subsistence allowance under section 209(c) of title 37) only if the person—*

*(1) is a citizen of the United States;*

*(2) enlists in an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary; and*

*(3) executes a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.*

*(c) A member of the program who is a minor may enter into a contract under subsection (a)(1) only with the consent of the member's parent or guardian.*

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**§ 2107. Financial assistance program for specially selected members**

(a) * * *

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(c)(1) * * *

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*(3) In the case of a cadet or midshipman eligible to receive financial assistance under paragraph (1) or (2), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of room and board expenses for the cadet or midshipman and other expenses required by the educational institution.*

*(4) The total amount of financial assistance, including the payment of room and board and other educational expenses, provided to a cadet or midshipman in an academic year under this subsection may not exceed an amount equal to the amount that could be provided as financial assistance for such cadet or midshipman under paragraph (1) or (2), or other amount determined by the Secretary concerned, without regard to whether room and board and other educational expenses for such cadet or midshipman are paid under paragraph (3).*

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**§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard**

(a) * * *

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(c)*(1)* The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

*(2) In the case of a cadet eligible to receive financial assistance under paragraph (1), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of room and board expenses for such cadet and other expenses required by the educational institution.*

*(3) The total amount of financial assistance, including the payment of room and board and any other educational expenses, provided to a cadet in an academic year under this subsection may not exceed an amount equal to the amount that could be provided as financial assistance for such cadet under paragraph (1), or other amount determined by the Secretary of the Army, without regard to whether the room and board and other educational expenses for such cadet are paid under paragraph (2).*

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(h) The Secretary of the Army shall appoint not more than 208 cadets each year under this section, to include not less than **[**10**]** *17* cadets at each military junior college at which there are not less than **[**10**]** *17* members of the program eligible under subsection (b) for such an appointment. At any military junior college at which in any year there are fewer than **[**10**]** *17* such members, the Secretary shall appoint each such member as a cadet under this section.

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## CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS FINANCIAL ASSISTANCE PROGRAMS

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### SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM

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**§ 2130a. Financial assistance: nurse officer candidates**

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on **[**December 31, 2003**]** *December 31, 2004*, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $10,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time

the agreement is accepted, except that the first installment may not exceed $5,000.

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## CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS

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### § 2166. Western Hemisphere Institute for Security Cooperation

(a) * * *

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(e) BOARD OF VISITORS.—(1) * * *

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(5) Not later than 60 days after its annual meeting, the Board shall submit to the Secretary of Defense *and to Congress* a written report of its activities and of its views and recommendations pertaining to the Institute.

* * * * * * *

**[**(i) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a detailed report on the activities of the Institute during the preceding year. The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report. The report shall be prepared in consultation with the Secretary of State.**]**

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## CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

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### § 2195. Department of Defense cooperative education programs

(a) * * *

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*(d)(1) The Director of the National Security Agency may provide a qualifying employee of a defense laboratory of that Agency with living quarters at no charge, or at a rate or charge prescribed by the Director by regulation, without regard to section 5911(c) of title 5.*

*(2) In this subsection, the term "qualifying employee" means a student who is employed at the National Security Agency under—*

*(A) a Student Educational Employment Program of the Agency conducted under this section or any other provision of law; or*

*(B) a similar cooperative or summer education program of the Agency that meets the criteria for Federal cooperative or summer education programs prescribed by the Office of Personnel Management.*

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# PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap. Sec.
131. Planning and Coordination ..... 2201
* * * * * * *
160. Environmental Restoration .....[2701] *2700*
* * * * * * *

## CHAPTER 131—PLANNING AND COORDINATION

Sec.
2201. Apportionment of funds: authority for exemption; excepted expenses.
* * * * * * *
[2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense.]
* * * * * * *

### § 2208. Working-capital funds

(a) * * *

* * * * * * *

(j)(1) * * *

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security [and notifies Congress regarding the reasons for the waiver].

* * * * * * *

### § 2214. Transfer of funds: procedure and limitations

(a) * * *

*(b) TRANSFER OF PROCUREMENT FUNDS FOR DEVELOPMENT ACTIVITIES FOR MAJOR DEFENSE ACQUISITION SYSTEMS.—(1) In the case of a major defense acquisition program (as defined in section 2430 of this title) for which funds are currently available both for procurement and for research, development, test, and evaluation, if the Secretary concerned determines that funds are required for further research, development, test, and evaluation activities for that program in excess of the funds currently available for that purpose, the Secretary may (subject to paragraph (2)) transfer funds available for that program for procurement to funds available for that program for research, development, test, and evaluation for the purpose of continuing research, development, test, and evaluation activities for that program.*

*(2)(A) The total amount transferred under the authority of paragraph (1) for any acquisition program may not exceed $20,000,000.*

*(B) The total amount transferred under the authority of paragraph (1) from amounts made available for any fiscal year may not exceed $250,000,000.*

*(3) The authority provided by paragraph (1) is in addition to any other transfer authority that may be provided by law.*

*(4) Upon a determination that all or part of the funds transferred under paragraph (1) are not necessary for the purpose for which the transfer was made, such amounts may be transferred*

*back to a Procurement appropriation for the purpose of procurement of the acquisition program for which funds were transferred.*

[(b)] *(c)* LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.—Such authority to transfer amounts—

(1) * * *

* * * * * * *

[(c)] *(d)* NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

[(d)] *(e)* LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

* * * * * * *

**§ 2216. Defense Modernization Account**

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the "Defense Modernization Account".

* * * * * * *

(j) DEFINITIONS.—In this section:

(1) * * *

* * * * * * *

[(3) The term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

* * * * * * *

**§ 2218. National Defense Sealift Fund**

(a) * * *

* * * * * * *

(l) DEFINITIONS.—In this section:

(1) * * *

* * * * * * *

[(4) The term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

[(5)] *(4)* The term "head of an agency" has the meaning given that term in section 2302(1) of this title.

* * * * * * *

**§ 2223. Information technology: additional responsibilities of Chief Information Officers**

(a) * * *

* * * * * * *

*(c) PERFORMANCE-BASED AND RESULTS-BASED MANAGEMENT.—In addition to the responsibilities provided for in subsections (a) and (b), the Chief Information Officer of the Department of Defense and the Chief Information Officer of a military department shall—*

*(1) encourage the use of performance-based and results-based management in fulfilling the responsibilities provided for in subsections (a) and (b), as applicable;*

*(2) evaluate the information resources management practices of the department concerned with respect to the performance and results of the investments made by the department in information technology;*

*(3) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of the department's major investments in information systems;*

*(4) ensure that any analysis of the missions of the department is adequate and make recommendations, as appropriate, on the department's mission-related processes, administrative processes, and any significant investments in information technology to be used in support of those missions; and*

*(5) ensure that information security policies, procedures, and practices are adequate.*

*(d) DEFENSE AGENCIES AND FIELD ACTIVITIES.—The Secretary of Defense shall require the Director of each Defense Agency and Department of Defense Field Activity to ensure that the responsibilities set forth in subsections (b) and (c) for Chief Information Officers of military departments are carried out within the Agency or Field Activity by any officer or employee acting as a chief information officer or carrying out duties similar to a chief information officer.*

**[**(c)**]** *(e)* DEFINITIONS.—In this section:

(1) * * *

* * * * * * *

**§ 2224. Defense Information Assurance Program**

(a) * * *

* * * * * * *

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subtitle II of chapter 35 of title 44, including through compliance with **[**subchapter III**]** *subchapter II* of chapter 35 of title 44. The program strategy shall include the following:

(1) * * *

* * * * * * *

(e) ANNUAL REPORT.—Each year *through 2007*, at or about the time the President submits the annual budget for the next fiscal year pursuant to section 1105 of title 31, the Secretary shall sub-

mit to Congress a report on the Defense Information Assurance Program. Each report shall include the following:

(1) * * *

* * * * * * *

**[§ 2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense**

[(a) IN GENERAL.—The provisions of subchapter II of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536 of such title.

[(b) RESPONSIBILITIES.—In administering the provisions of subchapter II of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536 of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.]

**§ 2225. Information technology purchases: tracking and management**

(a) * * *

* * * * * * *

(d) LIMITATION ON CERTAIN PURCHASES.—No purchase of information technology products or services in excess of the simplified acquisition threshold shall be made for the Department of Defense from a Federal agency outside the Department of Defense unless—

(1) * * *

(2)(A) * * *

* * * * * * *

(B) in the case of a purchase by a military department, the purchase is approved by the [senior procurement executive] *Chief Acquisition Officer* of the military department.

* * * * * * *

(f) DEFINITIONS.—In this section:

(1) The term "[senior procurement executive] *Chief Acquisition Officer*", with respect to a military department, means the official designated as the senior procurement executive for the military department for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * * * *

## CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

* * * * * * *

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

Sec.
2241. Availability of appropriations for certain purposes.

* * * * * * *

*2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications.*

* * * * * * *

[2248. Purchase of surety bonds: prohibition.]

* * * * * * *

### *§ 2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications*

*(a) PROHIBITION.—Except as otherwise provided in this section, the Secretary of a military department may not carry out a significant modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within five years after the date on which the modification, if carried out, would be completed.*

*(b) SIGNIFICANT MODIFICATIONS DEFINED.—For purposes of this section, a significant modification is any modification for which the cost is in an amount equal to or greater than $1,000,000.*

*(c) EXCEPTION FOR SAFETY MODIFICATIONS.—The prohibition in subsection (a) does not apply to a safety modification.*

*(d) WAIVER AUTHORITY.—The Secretary concerned may waive the prohibition in subsection (a) in the case of any modification otherwise subject to that subsection if the Secretary determines that carrying out the modification is in the national security interest of the United States. Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing.*

* * * * * * *

### [§ 2248. Purchase of surety bonds: prohibition

[Funds appropriated or otherwise made available to the Department of Defense for fiscal years 1995 through 1999 may not be obligated or expended for the purchase of surety bonds or other guarantees of financial responsibility in order to guarantee the performance of any direct function of the Department of Defense.]

* * * * * * *

## SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.
2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.

* * * * * * *

*2258. Personal cellular telephones: reimbursement when used for Government business.*

* * * * * * *

### § 2255. Aircraft accident investigation boards: composition requirements

(a) * * *

(b) EXCEPTION.—[(1)] The Secretary of the military department concerned may waive the requirement of subsection (a)(1) in the case of an aircraft accident if the Secretary determines that—

(A) it is not practicable to meet the requirement because of—

(i) the remote location of the aircraft accident;

(ii) an urgent need to promptly begin the investigation; or

(iii) a lack of available persons outside of the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the accident; and

(B) the objectivity and independence of the aircraft accident investigation board will not be compromised.

[(2) The Secretary shall notify Congress of a waiver exercised under this subsection and the reasons therefor.]

* * * * * * *

### *§ 2258. Personal cellular telephones: reimbursement when used for Government business*

*(a) GENERAL AUTHORITY.—The Secretary of Defense may reimburse members of the Army, Navy, Air Force, and Marine Corp, and civilian officers and employees of the Department of Defense, for cellular telephone use on a privately owned cellular telephone when used on official Government business. Such reimbursement shall be on a flat-rate basis.*

*(b) REIMBURSEMENT RATE.—The Secretary of Defense may prescribe the reimbursement rate for purposes of subsection (a). That reimbursement rate may not exceed the equivalent Government costs of providing a cellular telephone to employees on official Government business.*

* * * * * * *

## CHAPTER 135—SPACE PROGRAMS

Sec.
2271. Management of space programs: joint program offices and officer management programs.
*2272. Space surveillance network: pilot program for provision of satellite tracking services and data to entities outside United States Government.*

* * * * * * *

### *§ 2272. Space surveillance network: pilot program for provision of satellite tracking support to entities outside United States Government*

*(a) PILOT PROGRAM.—The Secretary of Defense may carry out a pilot program to determine the feasibility and desirability of providing to non-United States Governmental entities space surveillance data support described in subsection (b).*

*(b) SPACE SURVEILLANCE DATA SUPPORT.—Under such a pilot program, the Secretary may provide to a non-United States Governmental entity, subject to an agreement described in subsection (c), the following:*

*(1) Satellite tracking services from assets owned or controlled by the Department of Defense, but only if the Secretary determines, in the case of any such agreement, that providing such services to that entity is in the national security interests of the United States.*

*(2) Space surveillance data and the analysis of space surveillance data, but only if the Secretary determines, in the case of any such agreement, that providing such data and analysis*

*to that entity is in the national security interests of the United States.*

*(c) REQUIRED AGREEMENT.—The Secretary may not provide space surveillance data support to a non-United States Governmental entity under the pilot program unless that entity enters into an agreement with the Secretary under which the entity—*

*(1) agrees to pay an amount that may be charged by the Secretary under subsection (f); and*

*(2) agrees not to transfer any data or technical information received under the agreement, including the analysis of tracking data, to any other entity without the Secretary's express approval.*

*(d) REQUIREMENTS WITH RESPECT TO FOREIGN TRANSACTIONS.—(1) The Secretary may enter into an agreement under subsection (c) to provide space surveillance data support to a foreign government or other foreign entity only with the concurrence of the Secretary of State.*

*(2) In the case of such an agreement that is entered into with a foreign government or other foreign entity, the Secretary of Defense may provide approval under subsection (c)(2) for a transfer of data or technical information only with the concurrence of the Secretary of State.*

*(e) PROHIBITION CONCERNING PROVISION OF INTELLIGENCE ASSETS OR DATA.—Nothing in this section shall be considered to authorize the provision of services or information concerning, or derived from, United States intelligence assets or data.*

*(f) CHARGES.—As a condition of an agreement under subsection (c), the Secretary of Defense may require the non-United States Governmental entity entering into the agreement to pay to the Department of Defense—*

*(1) such amounts as the Secretary determines to be necessary to reimburse the Department of Defense for the costs to the Department of providing space surveillance data support under the agreement; and*

*(2) any other amount or fee that the Secretary may prescribe*

*(g) CREDITING OF FUNDS RECEIVED.—Funds received pursuant to an agreement under this section shall be credited to accounts of the Department of Defense that are current when the proceeds are received and that are available for the same purposes as the accounts originally charged to perform the services. Funds so credited shall merge with and become available for obligation for the same period as the accounts to which they are credited.*

*(h) PROCEDURES.—The Secretary shall establish procedures for the conduct of the pilot program. As part of those procedures, the Secretary may allow space surveillance data and analytical support to be provided through a contractor of the Department of Defense.*

*(i) DURATION OF PILOT PROGRAM.—The pilot program under this section shall be conducted during the three-year period beginning on a date specified by the Secretary of Defense, which date shall be not later than 180 days after the date of the enactment of this section.*

* * * * * * *

## CHAPTER 136—PROVISIONS RELATING TO SPECIFIC PROGRAMS

Sec.
2281. Global Positioning System.
[2282. B–2 bomber: annual report.]

### § 2281. Global Positioning System

(a) * * *

* * * * * * *

[(d) BIENNIAL REPORT.—(1) Not later than 30 days after the end of each even-numbered fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Global Positioning System. The report shall include a discussion of the following matters:

[(A) The operational status of the system.

[(B) The capability of the system to satisfy effectively (i) the military requirements for the system that are current as of the date of the report, and (ii) the performance requirements of the Federal Radionavigation Plan.

[(C) The most recent determination by the President regarding continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature.

[(D) The status of cooperative activities undertaken by the United States with the governments of other countries concerning the capability of the system or any augmentation of the system to satisfy civil, commercial, scientific, and military requirements, including a discussion of the status and results of activities undertaken under any regional international agreement.

[(E) Any progress made toward establishing GPS as an international standard for consistency of navigational service.

[(F) Any progress made toward protecting GPS from disruption and interference.

[(G) The effects of use of the system on national security, regional security, and the economic competitiveness of United States industry, including the Global Positioning System equipment and service industry and user industries.

[(2) In preparing the parts of each such report required under subparagraphs (D), (E), (F), and (G) of paragraph (1), the Secretary of Defense shall consult with the Secretary of State, the Secretary of Commerce, and the Secretary of Transportation.]

* * * * * * *

### [§ 2282. B–2 bomber: annual report

[Not later than March 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the B–2 bomber aircraft. Each such report shall include the following:

[(1) Identification of the average full-mission capable rate of B–2 aircraft for the preceding fiscal year and the Secretary's overall assessment of the implications of that full-mission ca-

pable rate on mission accomplishment for the B–2 aircraft, together with the Secretary's determination as to whether that rate is adequate for the accomplishment of each of the missions assigned to the B–2 aircraft as of the date of the assessment.

[(2) An assessment of the technical capabilities of the B–2 aircraft and whether these capabilities are adequate to accomplish each of the missions assigned to that aircraft as of the date of the assessment.

[(3) Identification of all ongoing and planned development of technologies to enhance the capabilities of that aircraft.

[(4) Identification and assessment of additional technologies that would make that aircraft more capable or survivable against known and evolving threats.

[(5) A fiscally phased program for each technology identified in paragraphs (3) and (4) for the budget year and the future-years defense program, based on the following three funding situations:

[(A) The President's current budget.

[(B) The President's current budget and the current Department of Defense unfunded priority list.

[(C) The maximum executable funding for the B–2 aircraft given the requirement to maintain enough operationally ready aircraft to accomplish missions assigned to the B–2 aircraft.]

* * * * * * *

## CHAPTER 137—PROCUREMENT GENERALLY

Sec.
2302. Definitions.
* * * * * * *
*2305b. Protests.*
* * * * * * *

### § 2302c. Implementation of electronic commerce capability

(a) * * *

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303(a) this title shall designate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the [senior procurement executive] *Chief Acquisition Officer* designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * * * *

### § 2304. Contracts: competition requirements

(a) * * *

* * * * * * *

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) * * *

(B) the justification is approved—

(i) * * *

* * * * * * *

(iii) in the case of a contract for an amount exceeding $50,000,000, by the [senior procurement executive] *Chief Acquisition Officer* of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation) or in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting in his capacity as the [senior procurement executive] *Chief Acquisition Officer* for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B); and

* * * * * * *

**§ 2304a. Task and delivery order contracts: general authority**

(a) * * *

* * * * * * *

(e) CONTRACT MODIFICATIONS.—*(1)* A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

*(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.*

*(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).*

[(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).]

*(f) LIMITATION ON CONTRACT PERIOD.—The base period of a task order contract or delivery order contract entered into under this section may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract. The contract may be extended for an additional 5 years (for a total contract period of not more than 10 years) through modifications, options, or otherwise.*

* * * * * * *

**§ 2304b. Task order contracts: advisory and assistance services**

[(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

[(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

[(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.]

*(a) IN GENERAL.—A task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services shall be subject to the requirements of this section, sections 2304a and 2304c of this title, and other applicable provisions of law.*

[(c)] *(b)* CONTENT OF NOTICE.—The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.]

[(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

[(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.]

*(c) REQUIRED CONTENT OF CONTRACT.—A task order contract described in subsection (a) shall contain the same information that is required by section 2304a(b) to be included in the solicitation of offers for that contract.*

[(e)] *(d)* MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts [under this section] *described in subsection (a)* for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) If, in the case of a task order contract for advisory and assistance services to be entered into [under this section], the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) * * *

* * * * * * *

[(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

[(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

[(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Pol-

icy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

[(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

[(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

[(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

[(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.]

[(h)] *(e)* INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

[(i)] *(f)* ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term "advisory and assistance services" has the meaning given such term in section 1105(g) of title 31.

* * * * * * *

**§ 2305a. Design-build selection procedures**

(a) * * *

* * * * * * *

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with [the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)] *chapter 11 of title 40*.

* * * * * * *

***§ 2305b. Protests***

*(a) IN GENERAL.—An interested party may protest an acquisition of supplies or services by an agency based on an alleged violation of an acquisition law or regulation, and a decision regarding*

*such alleged violation shall be made by the agency in accordance with this section.*

*(b) RESTRICTION ON CONTRACT AWARD PENDING DECISION.—(1) Except as provided in paragraph (2), a contract may not be awarded by an agency after a protest concerning the acquisition has been submitted under this section and while the protest is pending.*

*(2) The head of the acquisition activity responsible for the award of the contract may authorize the award of a contract, notwithstanding pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.*

*(c) RESTRICTION ON CONTRACT PERFORMANCE PENDING DECISION.—(1) Except as provided in paragraph (2), performance of a contract may not be authorized (and performance of the contract shall cease if performance has already begun) in any case in which a protest of the contract award is submitted under this section before the later of—*

*(A) the date that is 10 days after the date of contract award; or*

*(B) the date that is five days after an agency debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required, under section 2305(b)(5) of this title.*

*(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.*

*(d) DEADLINE FOR DECISION.—The head of an agency shall issue a decision on a protest under this section not later than the date that is 20 working days after the date on which the protest is submitted to such head of an agency.*

*(e) CONSTRUCTION.—Nothing in this section shall affect the right of an interested party to file a protest with the Comptroller General under subchapter V of chapter 35 of title 31 or in the United States Court of Federal Claims.*

*(f) DEFINITIONS.—In this section, the terms "protest" and "interested party" have the meanings given such terms in section 3551 of title 31.*

* * * * * * *

**§ 2306. Kinds of contracts**

(a) * * *

* * * * * * *

(e) **[**Each**]** *(1) Except as provided in paragraph (2), each* cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

**[**(1)**]** *(A)* a cost-plus-a-fixed-fee subcontract; or

**[**(2)**]** *(B)* a fixed-price subcontract or purchase order involving more than the greater of **[**(A)**]** *(i)* the simplified acquisition threshold, or **[**(B)**]** *(ii)* 5 percent of the estimated cost of the prime contract.

*(2) Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.*

* * * * * * *

**§ 2306b. Multiyear contracts: acquisition of property**

(a) * * *

* * * * * * *

(l) VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—(1) * * *

* * * * * * *

**[**(9) In this subsection, the term "congressional defense committees" means the following:

**[**(A) The Committee on Armed Services of the Senate and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

**[**(B) The Committee on Armed Services of the House of Representatives and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.**]**

**[**(10)**]** *(9)* In this subsection:

(A) * * *

* * * * * * *

**§ 2306c. Multiyear contracts: acquisition of services**

(a) * * *

* * * * * * *

**[**(g) LIMITATION PERIOD FOR TASK AND DELIVERY ORDER CONTRACTS.—(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with respect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

**[**(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multiyear requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.**]**

(h) **[**ADDITIONAL DEFINITIONS.—In this section:

**[**(1) The term "base closure law" has the meaning given such term in section 2667(h)(2) of this title.

**[**(2) The term**]** *MILITARY INSTALLATION DEFINED.—In this section, the term* "military installation" has the meaning given such term in section 2801(c)(2) of this title.

* * * * * * *

**§ 2308. Buy-to-budget acquisition: end items**

(a) * * *

* * * * * * *

(e) DEFINITIONS.—(1) * * *

(2) In this section:

[(A) The term "congressional defense committees" means—

[(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

[(B)] *(A)* The term "end item" means a production product assembled, completed, and ready for issue or deployment.

[(C)] *(B)* The term "head of an agency" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

* * * * * * *

**§ 2320. Rights in technical data**

(a) * * *

(b) Regulations prescribed under subsection (a) shall require that, wherever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) * * *

* * * * * * *

[(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;]

[(8)] *(7)* establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

[(9)] *(8)* authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

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**§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education**

(a) * * *

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(d) APPLICABILITY.—Subsection (a) does not apply to the Department of [Defense—

[(1) to the extent] *Defense to the extent* to which the Secretary of Defense determines that compelling national security considerations require otherwise[; and].

[(2) if the Secretary notifies Congress of such determination and the reasons for such determination.]

* * * * * * *

[(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

[(2) The report required under paragraph (1) shall include the following:

[(A) A full explanation of any progress toward attaining the goal of subsection (a).

[(B) A plan to achieve the goal, if necessary.

[(3) The report required under paragraph (1) shall also include the following:

[(A) The aggregate differential between the fair market price of all contracts awarded pursuant to subsection (e)(3) and the estimated fair market price of all such contracts had such contracts been entered into using full and open competitive procedures.

[(B) An analysis of the impact that subsection (a) shall have on the ability of small business concerns not owned and controlled by socially and economically disadvantaged individuals to compete for contracts with the agency.

[(C) A description of the percentage of contracts (actions), the total dollar amount (size of action), and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities.

[(D) A detailed description of the infrastructure assistance provided under subsection (c) during the preceding fiscal year and of the plans for providing such assistance during the fiscal year in which the report is submitted.]

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**§ 2327. Contracts: consideration of national security objectives**

(a) * * *

* * * * * * *

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary [after the date on which such head of an agency submits to Congress a report on the contract] *if in the best interests of the Government*.

(B) [A report under subparagraph (A)] *The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records* shall include the following:

(i) * * *

* * * * * * *

[(C) After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary

unless the information required to be included in such report under subparagraph (B) has materially changed since the submisson of the previous report.]

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## CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

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### SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS

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**§ 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries**

(a) * * *

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[(f) REPORTS TO CONGRESS.—(1) Not later than March 1 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Speaker of the House of Representatives and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section. Each such report shall include—

[(A) a description of the status, funding, and schedule of existing projects carried out under this section for which memoranda of understanding (or other formal agreements) have been entered into; and

[(B) a description of the purpose, funding, and schedule of any new projects proposed to be carried out under this section (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress pursuant to section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted.

[(2) Not later than January 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report specifying—

[(A) the countries that are eligible to participate in a cooperative project agreement under this section; and

[(B) the criteria used to determine the eligibility of such countries.]

(g) SIDE-BY-SIDE TESTING.—(1) * * *

* * * * * * *

[(3) The Deputy Director, Defense Research and Engineering (Test and Evaluation) shall notify the Speaker of the House of Representatives and the Committees on Armed Services and on Appropriations of the Senate of the Deputy Director's intent to obligate

funds made available to carry out this subsection not less than 30 days before such funds are obligated.]

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**§ 2350j. Burden sharing contributions by designated countries and regional organizations**

(a) * * *

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[(e) NOTICE AND WAIT REQUIREMENTS.—(1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit to the congressional committees specified in subsection (g) a report containing—

[(A) an explanation of the need for the project;

[(B) the then current estimate of the cost of the project; and

[(C) a justification for carrying out the project under that subsection.

[(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project.

[(3)(A) A military construction project under subsection (d) may be carried out without regard to the requirement in paragraph (1) and the limitation in paragraph (2) if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), that is in force at the time of the commencement of the project.

[(B) When a decision is made to carry out a military construction project under subparagraph (A), the Secretary of Defense shall submit to the congressional committees specified in subsection (g)—

[(i) a notice of the decision; and

[(ii) a statement of the current estimated cost of the project, including the cost of any real property transaction in connection with the project.]

* * * * * * *

[(g) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (e) are—

[(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

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## CHAPTER 139—RESEARCH AND DEVELOPMENT

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**§ 2359a. Technology Transition Initiative**

(a) * * *

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(i) DEFINITION.—In this section, the term "acquisition executive", with respect to a military department or Defense Agency, means the official designated as the [senior procurement executive] *Chief Acquisition Officer* for that military department or Defense Agency for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * * * *

**§ 2366. Major systems and munitions programs: survivability and lethality testing required before full-scale production**

(a) * * *

* * * * * * *

(e) DEFINITIONS.—In this section:

(1) * * *

* * * * * * *

[(7) The term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

[(8)] *(7)* The term "Milestone B approval" means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

[(9)] *(8)* The term "Milestone C approval" means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

**§ 2367. Use of federally funded research and development centers**

(a) * * *

* * * * * * *

[(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.]

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**§ 2371. Research projects: transactions other than contracts and grants**

(a) * * *

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[(h) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to the

Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use by the Department of Defense during such fiscal year of—

[(A) cooperative agreements authorized under section 2358 of this title that contain a clause under subsection (d); and

[(B) transactions authorized by subsection (a).

[(2) The report shall include, with respect to the cooperative agreements and other transactions covered by the report, the following:

[(A) The technology areas in which research projects were conducted under such agreements or other transactions.

[(B) The extent of the cost-sharing among Federal Government and non-Federal sources.

[(C) The extent to which the use of the cooperative agreements and other transactions—

[(i) has contributed to a broadening of the technology and industrial base available for meeting Department of Defense needs; and

[(ii) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

[(D) The total amount of payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause described in subsection (d) that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f).]

* * * * * * *

**§ 2374a. Prizes for advanced technology achievements**

(a) * * *

* * * * * * *

[(e) ANNUAL REPORT.—Promptly after the end of each fiscal year, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

[(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

[(2) The total amount of the prizes awarded.

[(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.]

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## CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

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**§ 2399. Operational test and evaluation of defense acquisition programs**

(a) * * *

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(h) [DEFINITIONS.—In this section:

[(1) The term] *OPERATIONAL TEST AND EVALUATION DEFINED.—In this section, the term* "operational test and evaluation" has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

[(A)] *(1)* computer modeling;

[(B)] *(2)* simulation; or

[(C)] *(3)* an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

[(2) The term "congressional defense committees" means—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

* * * * * * *

**§ 2410a. Severable service contracts for periods crossing fiscal years**

(a) AUTHORITY.—The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services *and the lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement,* for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

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**§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel**

(a) * * *

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(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. [Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.]

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### § 2410m. Retention of amounts collected from contractor during the pendency of contract dispute

(a) * * *

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(c) [REPORTING REQUIREMENT.—Each year] *ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year*, the Under Secretary of Defense (Comptroller) shall submit to Congress a report on the amounts, if any, that are available for obligation pursuant to this section. The report shall include, at a minimum, the following:

(1) The total amount available for obligation *at the end of such fiscal year*.

(2) The total amount collected from contractors [during the year preceding the year in which the report is submitted] *under this section during that fiscal year*.

(3) The total amount disbursed [in such preceding year] *under this section during that fiscal year* and a description of the purpose for each disbursement.

(4) The total amount returned to the Treasury [in such preceding year] *under this section during that fiscal year*.

* * * * * * *

## CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.

* * * * * * *

*2436. Major defense acquisition programs: requirement for certain items to be entirely produced in United States.*

* * * * * * *

### § 2432. Selected Acquisition Reports

(a) * * *

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(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such *program* and the Secretary of Defense has decided to proceed to system development and demonstration of such program. Reporting may be limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

* * * * * * *

### § 2433. Unit cost reports

(a) * * *

* * * * * * *

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program has increased by at least 15 percent[, or by at least 25 percent,] over the program acquisition unit cost for the program as shown in the Baseline Estimate.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program has increased by at least 15 percent[, or by at least 25 percent,] over the procurement unit cost for the program as reflected in the Baseline Estimate.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by at least 15 percent, [or by at least 25 percent,] as determined under paragraph (1), or that the procurement unit cost has increased by at least 15 percent, [or by at least 25 percent,] as determined under paragraph (2), the Secretary shall notify Congress in writing of such determination and of the increase with respect to such program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1) * * *

[(2) If the percentage increase in the program acquisition unit cost or procurement unit cost of a major defense acquisition program (as determined by the Secretary under subsection (d)) exceeds 25 percent, the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

[(A) a written certification, stating that—

[(i) such acquisition program is essential to the national security;

[(ii) there are no alternatives to such acquisition program which will provide equal or greater military capability at less cost;

[(iii) the new estimates of the program acquisition unit cost or procurement unit cost are reasonable; and

[(iv) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost; and

[(B) if a report under paragraph (1) has been previously submitted to Congress with respect to such program for the

current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.]

[(3)] *(2)* If a determination of an increase of at least 15 percent is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), [or if a determination of an increase of at least 25 percent is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2),] funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.

*(3)* The prohibition *under paragraph (2)* on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on [the date—

[(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B) with respect to that program, in the case of a determination of an increase of at least 15 percent (as determined in subsection (d)); or

[(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B) and the certification of the Secretary of Defense under paragraph (2)(A) with respect to that program, in the case of an increase of at least 25 percent (as determined under subsection (d)).] *the date on which Congress receives the Selected Acquisition Report under paragraph (1) with respect to that program.*

* * * * * * *

### *§ 2436. Major defense acquisition programs: requirement for certain items to be entirely produced in United States*

*The Secretary of Defense shall require that, for any procurement of a major defense acquisition program—*

*(1) the contractor for the procurement shall use only machine tools entirely produced within the United States to carry out the contract; and*

*(2) any subcontractor under the contract shall comply with paragraph (1) in the case of any contract in an amount that is $5,000,000 or greater.*

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## CHAPTER 145—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
[2452. Duties of Secretary of Defense.
[2453. Supply catalog: distribution and use.
[2454. Supply catalog: new or obsolete items.]

* * * * * * *

**[§ 2451. Defense supply management**

[(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

[(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

[(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

[(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

[(2) standardize the methods of packing, packaging, and preserving such items; and

[(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.]

***§ 2451. Defense supply management***

*(a) SINGLE CATALOG SYSTEM.—The Secretary of Defense shall adopt, implement and maintain a single catalog system for standardizing supplies for the Department of Defense. The single catalog system shall be used for each supply the Department uses, buys, stocks, or distributes.*

*(b) STANDARDIZATION REQUIREMENTS.—To the highest degree practicable, the Secretary of Defense shall—*

*(1) adopt and use single commercial standards or voluntary standards, in consultation with industry advisory groups, in order to eliminate overlapping and duplicate specifications for supplies for the Department of Defense and to reduce the number of sizes and kind of supplies that are generally similar;*

*(2) standardize the methods of packing, packaging, and preserving supplies; and*

*(3) make efficient use of the services and facilities for inspecting, testing, and accepting supplies.*

*(c) CONSULTATION AND COOPERATION.—The Secretary of Defense shall maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program.*

**[§ 2452. Duties of Secretary of Defense**

[The Secretary of Defense shall—

[(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

[(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

[(3) direct, review, and approve—

[(A) the naming, description, and pattern of description of all items;

[(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

[(C) the publication and distribution of the supply catalog;

[(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

[(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

[(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

[(7) establish time schedules for assignments made under clause (6); and

[(8) make final decisions in all matters concerned with the cataloging and standardization programs.

**[§ 2453. Supply catalog: distribution and use**

[The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

**[§ 2454. Supply catalog: new or obsolete items**

[(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

[(b) Obsolete items may be deleted from the catalog at any time.]

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**§ 2457. Standardization of equipment with North Atlantic Treaty Organization members**

(a) * * *

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[(d) Before February 1, 1989, and biennially thereafter, the Secretary shall submit a report to Congress that includes—

[(1) each specific assessment and evaluation made and the results of each assessment and evaluation, and the results achieved with the members of the North Atlantic Treaty Organization, under subsections (a) (1) and (2) and (b);

[(2) procurement action initiated on each new major system not complying with the policy of subsection (a);

[(3) procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of the Organization, including a description of the system chosen and the reason for choosing that system;

[(4) the identity of—

[(A) each program of research and development for the armed forces of the United States stationed in Europe that supports, conforms, or both, to common Organization requirements of developing weapon systems for use by the Organization, including a common definition of the military threat to the Organization; and

[(B) the common requirements of the Organization to which those programs conform or which they support;

[(5) action of the Alliance toward common Organization requirements if none exist;

[(6) efforts to establish a regular procedure and mechanism in the Organization to determine common military requirements;

[(7) a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the Organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds—

[(A) appropriated for those programs for the fiscal year in which the report is submitted; and

[(B) requested, or proposed to be requested, for those programs for each of the 2 fiscal years following the fiscal year for which the report is submitted; and

[(8) a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the Organization other than the United States during the fiscal year for which the report is submitted.]

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## CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

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### § 2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships

(a) * * *

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(f) EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION.—(1) Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract [entered into during fiscal years 2003 through 2006] shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

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## CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

Sec.
*2481. Existence of defense commissary system and exchange stores system.*
2482. Commissary stores: operation.

* * * * * * *

### *§ 2481. Existence of defense commissary system and exchange stores system*

*(a) IN GENERAL.—The Secretary of Defense shall operate a defense commissary system and an exchange stores system in the manner provided by this chapter and other provisions of law.*

*(b) SEPARATE SYSTEMS.—Except as authorized by section 2490a of this title, the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.*

### § 2482. Commissary stores: operation

(a) PRIVATE OPERATION.—[Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store.] *(1) Under such regulations as the Secretary of Defense may approve, private persons may operate selected commissary store functions, except that such functions may not include functions relating to the procurement of products to be sold in a commissary store or functions relating to the overall management of a commissary system or the management of a commissary store.* Such

functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

*(2) Any change to private operation of a commissary store function shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received, determined as provided in section 2486(d)(2) of this title.*

* * * * * * *

**§ 2484. Commissary stores: use of appropriated funds to cover operating expenses**

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system [may] *shall* be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds [may] *shall* be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) * * *

* * * * * * *

*(c) SUPPLEMENTAL FUNDS FOR COMMISSARY OPERATIONS.—Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, and other amounts received as reimbursement for other support activities provided by commissary activities.*

* * * * * * *

**§ 2490a. Combined exchange and commissary stores**

(a) * * *

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(f) [DEFINITIONS.—In this section:

[(1) The term] *NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term* "nonappropriated fund instrumentality" means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

[(2) The term "base closure law" has the meaning given such term by section 2667(h) of this title.]

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**§ 2493. Fisher Houses: administration as nonappropriated fund instrumentality**

(a) * * *

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[(g) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of each military department shall submit to Congress a report describing the operation of Fisher Houses and Fisher Suites associated with health care facilities of that military department. The report shall include, at a minimum, the following:

[(1) The amount in the fund established by that Secretary under subsection (d) as of October 1 of the previous year.

[(2) The operation of the fund during the preceding fiscal year, including—

[(A) all gifts, fees, and interest credited to the fund; and

[(B) all disbursements from the fund.

[(3) The budget for the operation of the Fisher Houses and Fisher Suites for the fiscal year in which the report is submitted.]

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## CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

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### SUBCHAPTER I—DEFINITIONS

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### § 2500. Definitions

In this chapter:

(1) The term "national technology and industrial base" means the persons and organizations that are engaged in research, development, [production, or maintenance] *production, and maintenance* activities conducted within the United States [and Canada] .

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### SUBCHAPTER II—POLICIES AND PLANNING

Sec.
2501. National security objectives concerning national technology and industrial base.
* * * * * * *
*2508. Goods and technologies critical for military superiority: list.*

* * * * * * *

### *§ 2508. Goods and technologies critical for military superiority: list*

*(a) REQUIREMENT TO MAINTAIN LIST.—(1) The Secretary of Defense shall maintain a list of any goods or technology that, if obtained by a potential adversary, could undermine the military superiority or qualitative military advantage of the United States over potential adversaries.*

*(2) In this section, 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.*

*(b) MATTERS TO BE INCLUDED ON LIST.—The Secretary shall include on the list the following:*

*(1) Any technology or developing critical technology (including conventional weapons, weapons of mass destruction, and delivery systems) that could enhance a potential adversary's military capabilities or that is critical to the United States maintaining its military superiority and qualitative military advantage.*

*(2) Any dual-use good, material, or know-how that could enhance a potential adversary's military capabilities or that is critical to the United States maintaining its military superiority and qualitative military advantage, including those used to manufacture weapons of mass destruction and their associated delivery systems.*

*(c) REQUIREMENTS.—The Secretary shall ensure that—*

*(1) the list is subject to a systematic, ongoing assessment and analysis of dual-use technologies; and*

*(2) the list is updated not less often than every two months.*

*(d) AVAILABILITY.—The list shall be made available—*

*(1) in unclassified form on the Department of Defense public website, in a usable form; and*

*(2) in classified form to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.*

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

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**§ 2515. Office of Technology Transition**

(a) * * *

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[(d) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report on the activities of the Office. The report shall be submitted each year at the same time that the budget is submitted to Congress by the President pursuant to section 1105 of title 31. The report shall contain a discussion of the accomplishments of the Office during the fiscal year preceding the fiscal year in which the report is submitted.

[(2) The committees referred to in paragraph (1) are—

[(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

[(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.]

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SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

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**§ 2521. Manufacturing Technology Program**

(a) * * *

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[(e) FIVE-YEAR PLAN.—(1) The Secretary of Defense shall prepare and maintain a five-year plan for the program.

[(2) The plan shall establish the following:

[(A) The overall manufacturing technology objectives, milestones, priorities, and investment strategy for the program.

[(B) The specific objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.

[(C) Plans for the implementation of the advanced manufacturing technologies and processes being developed under the program.

[(3) The plan shall be updated biennially and shall be included in the budget justification documents submitted in support of the budget of the Department of Defense for each even-numbered fiscal year (as included in the budget of the President submitted to Congress under section 1105 of title 31).]

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SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

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**§ 2533a. Requirement to buy certain articles from American sources; exceptions**

(a) REQUIREMENT.—Except as provided in subsections (c) [through (h)] *through (i)*, funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) * * *

(B) clothing *and the materials and components thereof*;

* * * * * * *

(2) Specialty metals, including stainless steel flatware *and any specialty metal that may be part of another item*.

* * * * * * *

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense [or the Secretary of the military department concerned] determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market

prices. *For each such determination, the Secretary of Defense shall notify Congress in writing of the factors supporting the determination. The Secretary of Defense or the Secretary of the military department concerned may not procure specialty metals pursuant to the exception authorized by this subsection until the Secretary submits to Congress and publishes in the Federal Register notice of the determination made under this subsection and a period of 15 days expires after the date such notification is submitted.*

* * * * * * *

(e) EXCEPTION FOR [SPECIALTY METALS AND] CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of [specialty metals or] chemical warfare protective clothing produced outside the United States if—

(1) * * *

* * * * * * *

*(i) EXCEPTION FOR COMMERCIAL ITEMS CONTAINING SPECIALTY METALS.—*

*(1) IN GENERAL.—Subsection (a) does not apply to the procurement of a commercial item containing specialty metals if—*

*(A) the contractor agrees to comply with the requirement set forth in paragraph (2); or*

*(B) the Secretary of Defense determines in writing that the Department of Defense's need for the commercial item containing specialty metal is of such an unusual and compelling urgency that the United States would be seriously injured unless the Department is permitted to procure the item containing specialty metal from outside the United States.*

*(2) REQUIREMENT TO PURCHASE EQUIVALENT AMOUNT OF DOMESTIC METAL.—For purposes of paragraph (1)(A), the requirement set forth in this paragraph is that the contractor for each contract entered into by the Secretary for the procurement of a commercial item containing specialty metal agrees to purchase, over the 18-month period beginning on the date of award of the contract, an amount of specialty metal that is—*

*(A) produced, including such functions as melting and smelting, in the United States; and*

*(B) equivalent to—*

*(i) the amount of specialty metal (measured by factors including volume, type, and grade) purchased to carry out the work under the contract (including the work under each subcontract at any tier under the contract); plus*

*(ii) 10 percent of the amount referred to in clause (i).*

*(3) RELATIONSHIP TO OTHER EXCEPTIONS.—The exceptions under subsections (c), (d), and (h) of this section shall not apply to the procurement of a commercial item containing specialty metals.*

*(4) NOTICE TO CONGRESS.—The Secretary of Defense shall not enter into a contract to procure a commercial item containing specialty metal pursuant to the exception in subsection (a) until Congress is notified that the Secretary has applied the*

*exception and a period of 15 days has expired after such notification is made.*

*(5) NOTICE TO INDUSTRY.—The Secretary of Defense shall publish a notice in the Federal Register on the method that the Department of Defense will use to measure an equivalent amount of specialty metal for purposes of this subsection. Such a method shall consider factors such as volume, type, and grade of specialty metal that otherwise would be produced from United States sources.*

**[**(i)**]** *(j)* APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

**[**(j)**]** *(k)* GEOGRAPHIC COVERAGE.—In this section, the term "United States" includes the possessions of the United States.

*(l) AUTHORITY NOT DELEGABLE.—The Secretary may not delegate any authority under this section to anyone other than the Under Secretary of Defense for Acquisition, Technology, and Logistics.*

### § 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) * * *

* * * * * * *

*(6) Fuzes used for ordnance.*

*(7) Microwave power tubes or traveling wave tubes.*

*(8) PAN carbon fiber.*

*(9) Aircraft tires.*

*(10) Ground vehicle tires.*

*(11) Tank track assemblies.*

*(12) Tank track components.*

*(13) Packaging in direct contact with meals within meals ready-to-eat listed in Federal Supply Class 8970.*

* * * * * * *

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines *in writing* that any of the following apply:

**[**(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

**[**(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

**[**(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is en-

tered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.]

*(1) The Department of Defense's need for the item is of such an unusual and compelling urgency that the United States would be seriously injured unless the Department is permitted to procure the item from sources outside the United States.*

[(4)] *(2)* Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title) are not available.

[(5)] *(3)* Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title). *This exception shall not apply to items determined to be critical by the Secretary of Defense under section 812 of the National Defense Authorization Act for Fiscal Year 2004.*

[(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

[(7) Application of the limitation is not in the national security interests of the United States.

[(8) Application of the limitation would adversely affect a United States company.]

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**§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition**

(a) * * *

* * * * * * *

(b) WAIVER AUTHORITY.—(1) * * *

(2) The Secretary concerned shall [notify Congress] *maintain a record* of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. [The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.] *The records maintained under the preceding sentence with respect to a waiver shall include a justification in suport of the decision to grant the waiver and shall be retrievable for any particular waiver or for waivers during any period of time.*

* * * * * * *

*(d) The Secretary of Defense shall maintain an account of actions relating to the award of contracts to a prime contractor. The Secretary of Defense shall include in such accounts the reasons for exercising the awards and the work expected to be performed.*

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SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

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**§ 2541d. Reports**

[(a) REPORT BY COMMERCIAL FIRMS TO SECRETARY OF DEFENSE.—]The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

[(b) ANNUAL REPORT BY SECRETARY OF DEFENSE TO CONGRESS.—Not later than March 1 of each year in which guarantees are made under this subchapter, the Secretary of Defense shall submit to Congress a report on the loan guarantee program under this subchapter. The report shall include the following:

[(1) The amounts of the loans for which guarantees were issued during the year preceding the year of the report.

[(2) The success of the program in improving the protection of the critical infrastructure of the commercial firms covered by the guarantees.

[(3) The relationship of the loan guarantee program to the critical infrastructure protection program of the Department of Defense, together with an assessment of the extent to which the loan guarantee program supports the critical infrastructure protection program.

[(4) Any other information on the loan guarantee program that the Secretary considers appropriate to include in the report.]

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## CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

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**§ 2561. Humanitarian assistance**

(a) AUTHORIZED ASSISTANCE.—*(1)* To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

*(2) The authority of the Department of Defense to provide humanitarian assistance under this section includes the authority to transport supplies or provide assistance intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment.*

* * * * * * *

[(c) STATUS REPORTS.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (f) an annual report on the provision of humanitarian assistance pursuant to this section for the prior fiscal year. The report shall be submitted each year at the time of the budget submission by the President for the next fiscal year.

[(2) Each report required by paragraph (1) shall cover all provisions of law that authorize appropriations for humanitarian assistance to be available from the Department of Defense for the purposes of this section.

[(3) Each report under this subsection shall set forth the following information regarding activities during the previous fiscal year:

[(A) The total amount of funds obligated for humanitarian relief under this section.

[(B) The number of scheduled and completed transportation missions for purposes of providing humanitarian assistance under this section.

[(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title. The description shall include the date of the transfer, the entity to whom the transfer is made, and the quantity of items transferred.

[(d) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.]

* * * * * * *

[(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsections (c)(1) and (d) are the following:

[(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

[(2) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.]

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### § 2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) * * *

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(c) CONDITIONS FOR SALES.—(1) * * *

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security [and notifies Congress regarding the reasons for the waiver].

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## CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

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Sec.
2571. Interchange of property and services.

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[2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries.]
*2581. Specified excess aircraft: requirements for transfer to foreign countries.*

* * * * * * *

## [§ 2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries]

## *§ 2581. Specified excess aircraft: requirements for transfer to foreign countries*

(a) REQUIREMENTS.—(1) Before an excess [UH–1 Huey helicopter or AH–1 Cobra helicopter] *UH–1 Huey aircraft, AH–1 Cobra aircraft, T–2 Buckeye aircraft, or T–37 Tweet aircraft* is transferred on a grant or sales basis to a foreign country for the purpose of flight operations by that country, the Secretary of Defense shall make all reasonable efforts to ensure that the [helicopter] *aircraft* receives, to the extent necessary, maintenance and repair equivalent to the depot-level maintenance and repair (as defined in section 2460 of this title) that the [helicopter] *aircraft* would need were the [helicopter] *aircraft* to remain in operational use with the armed forces. Any such maintenance and repair work shall be performed at no cost to the Department of Defense.

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## CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.

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2611. Asia-Pacific Center for Security Studies: acceptance of [foreign] gifts and donations.

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## § 2611. Asia-Pacific Center for Security Studies: acceptance of [foreign] gifts and donations

(a) AUTHORITY TO ACCEPT [FOREIGN] GIFTS AND DONATIONS.—(1) Subject to subsection (b), the Secretary of Defense may accept, on behalf of the Asia-Pacific Center, [foreign] gifts or donations in order to defray the costs of, or enhance the operation of, the Asia-Pacific Center. *Such gifts and donations may be accepted from any agency of the United States, any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any other private source in the United States or a foreign country.*

* * * * * * *

(c) CRITERIA FOR ACCEPTANCE.—The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether the acceptance of a [foreign] gift or donation would have a result described in subsection (b).

* * * * * * *

(f) [FOREIGN] GIFT OR DONATION DEFINED.—For purposes of this section, a [foreign] gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) [from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country].

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## CHAPTER 157—TRANSPORTATION

Sec.
2631. Supplies: preference to United States vessels.

* * * * * * *

*2648. Dependents of members assigned to overseas duty locations for continuous period in excess of one year: space-available transportation.*

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### § 2634. Motor vehicles: transportation or storage for members on change of permanent station or extended deployment

(a) * * *

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*(h) In the case of a change of permanent station described in subparagraph (A) or (B) of subsection (i)(1), the Secretary concerned may authorize the member to arrange for the shipment of the motor vehicle in lieu of transportation at the expense of the United States under this section. The Secretary concerned may pay the member a monetary allowance in lieu of transportation, as established under section 404(d)(1) of title 37, and the member shall be responsible for any transportation costs in excess of such allowance.*

[(h)] *(i)* In this section:

(1) * * *

* * * * * * *

### § 2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance

(a) * * *

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[(d) NOTICE TO CONGRESS.—In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $1,000,000, the Secretary of Defense shall submit to Congress—

[(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

[(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.]

* * * * * * *

[(g) ANNUAL REPORT ON CONTINGENT LIABILITIES.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).]

* * * * * * *

### *§ 2648. Dependents of members assigned to overseas duty locations for continuous period in excess of one year: space-available transportation*

*(a) AUTHORITY.—The Secretary of Defense shall authorize travel on Government aircraft on a space-available basis for dependents of members on active duty assigned to duty at an overseas location as described in subsection (b) to the same extent as such travel is authorized for a dependent of a member assigned to that duty location in a permanent change of station status.*

*(b) DUTY STATUS COVERED.—Duty at an overseas location described in this subsection is duty for a continuous period in excess of one year that is in a temporary duty status or that is in a permanent duty status without change of station.*

*(c) TYPES OF TRANSPORTATION AUTHORIZED.—If authorized for other members at that duty location, travel provided under this section may include (1) travel between the overseas duty location and the United States and return, and (2) travel between the overseas duty location and another overseas location and return.*

*(d) ALASKA AND HAWAII.—For purposes of this section, duty in Alaska or Hawaii shall be considered to be duty at an overseas location.*

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## CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

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[2672. Acquisition: interests in land when cost is not more than $500,000.]
*2672. Authority to acquire low-cost interests in land.*

* * * * * * *

[2679. Representatives of veterans' organizations: use of space and equipment.]
*2679. Access to and use of space and equipment at military installations: representatives of veterans' organizations and other persons.*

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*2694b. Participation in wetland mitigation banks.*

* * * * * * *

### § 2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of [30 days from the date upon which a report of the facts concerning the proposed transaction is submitted] *14 days after the beginning of the month with respect*

*to which a single report containing the facts concerning such transaction and all other such proposed transactions for that month is submitted, not later than the first day of that month,* to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than [$500,000] *$1,500,000*.

(2) A lease of any real property to the United States, if the estimated annual rental is more than [$500,000] *$1,500,000*.

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than [$500,000] *$1,500,000*.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than [$500,000] *$1,500,000*.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than [$500,000] *$1,500,000*.

* * * * * * *

(b) ANNUAL REPORTS ON CERTAIN MINOR TRANSACTIONS.—The Secretary of each military department shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of [more than the simplified acquisition threshold specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), but not more than $500,000] *more than $250,000 but not more than $1,500,000*.

* * * * * * *

(e) NOTICE AND WAIT REGARDING LEASES OF SPACE FOR DOD BY GSA.—No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of [$500,000] *$1,000,000* (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the expiration of [thirty days] *14 days* from the date upon which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a).

* * * * * * *

(g) EXCEPTIONS FOR TRANSACTIONS FOR WAR AND CERTAIN EMERGENCY AND OTHER OPERATIONS.—(1) * * *

* * * * * * *

(3) Not later than [30 days] *14 days* after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a) or (e), as the case may be, but for the operation of paragraph (1) or (2).

* * * * * * *

**§ 2667. Leases: non-excess property of military departments**

(a) * * *

* * * * * * *

(h) In this [section:

[(1) The term "congressional defense committees" means:

[(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

[(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

[(2) The term "base closure law" means the following:

[(A) Section 2687 of this title.

[(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

[(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

[(3) The term] *section, the term* "military installation" has the meaning given such term in section 2687(e)(1) of this title.

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**§ 2667a. Leases: non-excess property of Defense agencies**

(a) * * *

* * * * * * *

(c) COMPETITIVE SELECTION.—(1) * * *

(2) Not later than [45 days] *14 days* before entering into a lease described in paragraph (1), the Secretary shall submit to Congress a written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

* * * * * * *

**[§ 2672. Acquisition: interests in land when cost is not more than $500,000]**

***§ 2672. Authority to acquire low-cost interests in land***

(a)(1) The Secretary of a military department may acquire any interest in land that—

(A) * * *

(B) does not cost more than [$500,000] *$1,500,000*, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than [$500,000] *$1,500,000*.

* * * * * * *

**§ 2672a. Acquisition: interests in land when need is urgent**

(a) The Secretary of a military department may acquire any interest in land that—

(1) [he or his designee] *the Secretary* determines is needed in the interest of national defense;

* * * * * * *

(b) Appropriations available for military construction may be used for the purposes of this section. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. [The Secretary of a military department contemplating action under this section shall provide notice, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives at least 30 days in advance of any action being taken.]

*(c) Not later than 10 days after the determination is made under subsection (a)(1) that acquisition of an interest in land is needed in the interest of the national defense, the Secretary of the military department making that determination shall provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives written notice containing a description of the property and interest to be acquired and the reasons for the acquisition.*

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**§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region**

(a) * * *

* * * * * * *

*(g) For purposes of subsections (b), (c), (d), and (e), the terms "Pentagon Reservation" and "National Capital Region" shall be treated as including the land and physical facilities at the Raven Rock Mountain Complex and such other areas of land, locations, and physical facilities of the Department of Defense within 100 miles of the District of Columbia as the Secretary of Defense determines are necessary to meet the needs of the Department of Defense directly relating to continuity of operations and continuity of government.*

**§ 2675. Leases: foreign countries**

The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, *or 15 years in the case of a lease in Korea,* and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

**§ 2676. Acquisition: limitation**

(a) * * *

* * * * * * *

(d) The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts re-

lating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the appropriate committees of Congress. A contract for the acquisition may then be awarded only after a period of [21 days] *14 days* elapses from the date the notification is received by the committees.

* * * * * * *

**[§ 2679. Representatives of veterans' organizations: use of space and equipment]**

***§ 2679. Access to and use of space and equipment at military installations: representatives of veterans' organizations and other persons***

(a) *ACCESS BY REPRESENTATIVES OF VETERANS' ORGANIZATIONS.—(1)* Upon certification to the Secretary concerned by the Secretary of Veterans' Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of that Secretary concerned that are on land and from which persons are discharged or released from active duty.

[(b)] *(2)* The commanding officer of each of those military installations shall allow the representatives described in [subsection (a)] *paragraph (1)* to use available space and equipment at that installation.

[(c)] *(3)* The regulations prescribed to carry out this [section] *subsection* that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Secretary of Veterans Affairs.

*(b) ACCESS FOR PERSONAL COMMERCIAL SOLICITATION.—An amendment or other revision to a Department of Defense directive relating to access to military installations for the purpose of conducting limited personal commercial solicitation shall not take effect until the end of the 90-day period beginning on the date the Secretary of Defense submits to Congress notice of the amendment or revision and the reasons therefor.*

[(d)] *(c)* This section does not authorize the violation of measures of military security.

**§ 2680. Leases: land for special operations activities**

(a) * * *

* * * * * * *

[(e) REPORTS.—Not later than March 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that—

[(1) identifies each leasehold interest acquired during the previous fiscal year under subsection (a); and

[(2) contains a discussion of each project for the construction or modification of facilities carried out pursuant to subsection (c) during such fiscal year.]

* * * * * * *

**§ 2688. Utility systems: conveyance authority**

(a) * * *

* * * * * * *

(e) NOTICE-AND-WAIT REQUIREMENT.—The Secretary concerned may not make a conveyance under subsection (a) until—

(1) the Secretary submits to [the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] *the congressional defense committees* an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

(A) * * *

* * * * * * *

***§ 2694b. Participation in wetland mitigation banks***

*(a) AUTHORITY TO PARTICIPATE.—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or "in-lieu-fee" mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance.*

*(b) ALTERNATIVE TO CREATION OF WETLAND.—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.*

*(c) TREATMENT OF PAYMENTS.—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.*

* * * * * * *

**§ 2696. Screening of real property for further Federal use before conveyance**

(a) * * *

* * * * * * *

[(c) NOTICE OF FURTHER FEDERAL USE.—If the Administrator of General Services notifies the Secretary concerned under subsection (b) that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency, the Secretary concerned shall submit a copy of the notice to Congress.

[(d) CONGRESSIONAL DISAPPROVAL.—If the Secretary concerned submits a notice under subsection (c) with regard to a parcel of real property, the Secretary concerned may not proceed with the con-

veyance of the real property as provided in the provision of law authorizing or requiring the conveyance if Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which the Secretary concerned submits the notice.]

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of this section shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

[(1) Section 2687 of this title.

[(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

[(3) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

[(4) Any provision of law authorizing the closure or realignment of a military installation that is enacted after November 18, 1997.]

*(1) A base closure law.*

[(6)] *(2)* Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

* * * * * * *

## CHAPTER 160—ENVIRONMENTAL RESTORATION

* * * * * * *

### § 2703. Environmental restoration accounts

(a) * * *

* * * * * * *

(c) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) * * *

(2) The authority provided by paragraph (1)(B) expires September 30, 2003. The Secretary of Defense or the Secretary of a military department may not pay the costs of permanently relocating a facility under such paragraph [unless the Secretary—

[(A) determines that] *unless the Secretary determines that* permanent relocation—

[(i)] *(A)* is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants, or contaminants from the real property on which the facility is located;

[(ii)] *(B)* has the approval of relevant regulatory agencies; and

[(iii)] *(C)* is supported by the affected community; and

[(B) submits to Congress written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation.]

* * * * * * *

**§ 2705. Notice of environmental restoration activities**

(a) * * *

* * * * * * *

(d) RESTORATION ADVISORY BOARD.—(1) * * *

(2)(A) * * *

* * * * * * *

*(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a restoration advisory board established under this subsection.*

* * * * * * *

[(h) DEFINITION.—In this section, the term "base closure law" means the following:

[(1) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

[(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

[(3) Section 2687 of this title.]

* * * * * * *

## CHAPTER 161—PROPERTY RECORDS AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY

Sec.
2721. Property records: maintenance on quantitative and monetary basis.

* * * * * * *

[2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs.]

* * * * * * *

**[§ 2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs**

[(a) REQUIRED NOTIFICATION.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States. The Secretary shall consult with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, before submitting any such notification.

[(b) MANNER OF NOTIFICATION.—Notification of a failure or compromise of classified information under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (c), not later than 30 days after the date on which the Department of Defense determines that the failure or compromise has taken place.

[(c) PROCEDURES.—The Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect

from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

[(d) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

[(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413).]

* * * * * * *

## CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

* * * * * * *

### SUBCHAPTER I—MILITARY CONSTRUCTION

Sec.
2801. Scope of chapter; definitions.

* * * * * * *

*2810. Use of operation and maintenance funds for construction: notification and reporting requirements and limitations.*

* * * * * * *

### § 2801. Scope of chapter; definitions

(a) * * *

* * * * * * *

(c) In this chapter:

(1) * * *

* * * * * * *

(4) The term "appropriate committees of Congress" means the [Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] *the congressional defense committees* and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

* * * * * * *

### § 2803. Emergency construction

(a) * * *

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall sub-

mit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the [21-day period] *seven-day period* beginning on the date the notification is received by such committees.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is [$30,000,000] *$45,000,000*.

* * * * * * *

**§ 2804. Contingency construction**

(a) * * *

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the [21-day period] *14–day period* beginning on the date the notification is received by such committees.

**§ 2805. Unspecified minor construction**

(a) * * *

(b)(1) An unspecified minor military construction project costing more than [$750,000] *$1,000,000* may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the [21-day period] *seven-day period* beginning on the date the notification is received by the committees.

* * * * * * *

**§ 2807. Architectural and engineering services and construction design**

(a) * * *

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds [$500,000] *$1,000,000*, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services [not less than 21 days] before the initial obligation of funds for such services.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of [21] *14* days has elapsed from the date of receipt of the report.

* * * * * * *

**§ 2809. Long-term facilities contracts for certain activities and services**

(a) * * *

* * * * * * *

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) * * *

(2) a period of [21 calendar days] *14 days* has expired following the date on which the justification and the economic analysis are received by the committees.

***§ 2810. Use of operation and maintenance funds for construction: notification and reporting requirements and limitations***

*(a) ADVANCE NOTIFICATION OF OBLIGATION OF FUNDS.—(1) The Secretary concerned shall submit to the appropriate committees of Congress advance written notice before appropriations available for operation and maintenance are obligated for construction described in paragraph (2). The notice shall be submitted not later than 14 days before the date on which appropriations available for operation and maintenance are first obligated for that construction and shall contain the information required by subsection (c).*

*(2) Paragraph (1) applies with respect to any construction having an estimated total cost of more than $1,500,000, but not more than $5,000,000, which is paid for in whole or in part using appropriations available for operation and maintenance, if—*

*(A) the construction is necessary to meet urgent military operational requirements of a temporary nature;*

*(B) the construction was not carried out at a military installation where the United States is reasonably expected to have a long-term interest or presence;*

*(C) the United States has no intention of using the construction after the operational requirement has been satisfied; and*

*(D) the level of construction is the minimum necessary to meet the temporary operational need.*

*(b) WAIVER AUTHORITY; CONGRESSIONAL NOTIFICATION.—(1) The Secretary concerned may waive the advance notice requirement under subsection (a) on a case-by-case basis if the Secretary determines that—*

*(A) the project is vital to the national security or to the protection of health, safety, or the quality of the environment; and*

*(B) the requirement for the construction is so urgent that deferral of the construction during the period specified in sub-*

*section (a)(1) would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.*

*(2) Not later than five days after the date on which a waiver is granted under paragraph (1), the Secretary concerned shall provide to the appropriate committees of Congress written notice containing the reasons for the waiver and the information required by subsection (c) with regard to the construction for which the waiver was granted.*

*(c) CONTENT OF NOTICE.—The notice provided under subsection (a) or (b) with regard to construction funded using appropriations available for operation and maintenance shall include the following:*

*(1) A description of the purpose for which the funds are being obligated.*

*(2) An estimate of the total amount to be obligated for the construction.*

*(3) The reasons appropriations available for operation and maintenance are being used.*

*(d) LIMITATIONS ON USE OF OPERATION AND MAINTENANCE FUNDS.—(1) The Secretary concerned shall not use appropriations available for operation and maintenance to carry out any construction having an estimated total cost of more than $5,000,000.*

*(2) The total cost of construction carried out by the Secretaries concerned in whole or in part using appropriations available for operation and maintenance shall not exceed $200,000,000 in any fiscal year.*

*(e) QUARTERLY REPORT.—The Secretary concerned shall submit to the appropriate committees of Congress a quarterly report on the worldwide obligation and expenditure of appropriations available for operation and maintenance by the Secretary concerned for construction during the preceding quarter.*

* * * * * * *

**§ 2812. Lease-purchase of facilities**

(a) * * *

* * * * * * *

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) * * *

(B) a period of [21] *14* days has expired following the date on which the justification and economic analysis are received by the committees.

* * * * * * *

**§ 2813. Acquisition of existing facilities in lieu of authorized construction**

(a) * * *

* * * * * * *

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the end of the [30-day period] *21–day period* beginning on the date the Secretary concerned transmits to the appropriate committees of Congress a written notification of the determination to

acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility.

**§ 2814. Special authority for development of Ford Island, Hawaii**

(a) * * *

* * * * * * *

(i) USE OF ACCOUNT.—(1) * * *

* * * * * * *

[(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

[(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

[(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.]

*(A) The Secretary may transfer funds from the Ford Island Improvement Account to the Department of Defense Housing Improvement Fund established by section 2883(a) of this title.*

(B) Amounts transferred under subparagraph (A) to [a fund] *the Fund* referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

* * * * * * *

SUBCHAPTER II—MILITARY FAMILY HOUSING

* * * * * * *

**§ 2822. Requirement for authorization of number of family housing units**

(a) * * *

(b) Subsection (a) does not apply to the following:

(1) * * *

* * * * * * *

*(6) Housing units constructed or provided under section 2869 of this title.*

* * * * * * *

**§ 2825. Improvements to family housing units**

(a) * * *

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) $50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if (i) such Secretary determines that, considering

the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective, and (ii) a period of [21] *14* days elapses after the date on which the appropriate committees of Congress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.

* * * * * * *

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) * * *

* * * * * * *

(D) a period of [21] *14* days elapses after the date on which the Secretary submits the notice required by subparagraph (C).

* * * * * * *

**§ 2826. Military family housing: local comparability of room patterns and floor areas**

[(a) LOCAL COMPARABILITY.—]In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

[(b) REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.—(1) In submitting to Congress a request for authority to carry out the construction, acquisition, or improvement of military family housing, the Secretary concerned shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

[(2) In this subsection, the term "net floor area", in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.]

**§ 2827. Relocation of military family housing units**

(a) * * *

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of [21] *14* days has elapsed after the notification has been received by those committees.

**§ 2828. Leasing of military family housing**

(a) * * *

* * * * * * *

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of **[**ten years,**]** *10 years, or 15 years in the case of leases in Korea,* and the costs of such leases for any year may be paid out of annual appropriations for that year.

* * * * * * *

(e)(1) * * *

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Navy may lease not more than **[**2,000**]** *2,800* units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy, subject to that maximum lease amount.

* * * * * * *

**§ 2836. Military housing rental guarantee program**

(a) * * *

* * * * * * *

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) * * *

(2) a period of **[**21**]** *14* calendar days has expired following the date on which the economic analysis is received by those committees.

* * * * * * *

**§ 2837. Limited partnerships with private developers of housing**

(a) * * *

* * * * * * *

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) * * *

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the **[**21-day period**]** *14–day period* beginning on the date the report is received by such committees.

* * * * * * *

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.
2851. Supervision of military construction projects.

* * * * * * *

[2859. Transmission of annual military construction authorization request.]

* * * * * * *

*2869. Conveyance of property at military installations closed or to be closed in exchange for military construction activities.*

* * * * * * *

## § 2854. Restoration or replacement of damaged or destroyed facilities

(a) * * *

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the [21-day period] *seven-day period* beginning on the date the notification is received by such committees.

## § 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) * * *

* * * * * * *

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until—

(1) * * *

(2) a period of [21 calendar days] *14 days* has elapsed after the date on which the justification is received by the committees.

* * * * * * *

## § 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) * * *

(b)(1) * * *

(2) The initial threshold amount under paragraph (1) is [$85,000] *$300,000*. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

* * * * * * *

*(4) The selection and competition requirements described in subsection (a) shall apply to any contract for architectural and engineering services (including surveying and mapping services) that is*

*entered into by the head of an agency (as such term is defined in section 2302 of this title).*

* * * * * * *

**[§ 2859. Transmission of annual military construction authorization request**

[The Secretary of Defense shall transmit to Congress the annual request for military construction authorization for a fiscal year during the first 10 days after the President transmits to Congress the Budget for that fiscal year pursuant to section 1105 of title 31.]

* * * * * * *

**§ 2865. Energy savings at military installations**

(a) * * *

(b) USE OF ENERGY COST SAVINGS.—(1) [Two-thirds of the portion of the funds appropriated to the Department of Defense for a fiscal year that is] *Funds appropriated to the Department of Defense for a fiscal year that are* equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts, shall remain available for obligation under paragraph (2) until expended, without additional authorization or appropriation.

* * * * * * *

(e) ENERGY CONSERVATION CONSTRUCTION PROJECTS.—[(1)] The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

[(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

[(f) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Defense shall transmit an annual report to the Congress containing a description of the actions taken to carry out this section, and the savings realized from such actions, during the fiscal year ending in the year in which the report is made. The Secretary shall also include in each report the types and amount of financial incentives received under subsection (d)(2) and section 2866(a)(2) of this title during the period covered by the report and the appropriation account or accounts to which the incentives were credited.]

**§ 2866. Water conservation at military installations**

(a) * * *

* * * * * * *

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—[(1)] The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

[(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.]

**§ 2867. Sale of electricity from alternate energy and cogeneration production facilities**

(a) * * *

* * * * * * *

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the [21-day period] *14–day period* beginning on the date the notification is received by Congress.

* * * * * * *

***§ 2869. Conveyance of property at military installations closed or to be closed in exchange for military construction activities***

*(a) CONVEYANCE AUTHORIZED; CONSIDERATION.—The Secretary of Defense may enter into an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a base closure law to any person who agrees, in exchange for the real property—*

*(1) to carry out, or provide services in connection with, an authorized military construction project; or*

*(2) to transfer to the Secretary of Defense housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing or military unaccompanied housing (or both).*

*(b) CONDITIONS ON CONVEYANCE AUTHORITY.—A conveyance of real property may be made under subsection (a) only if—*

*(1) the fair market value of the consideration to be received in exchange for the real property conveyed under subsection (a) is equal to or greater than the fair market value of the property, including any improvements thereon, as determined by the Secretary concerned; and*

*(2) in the event the fair market value of the consideration to be received is equal to at least 90 percent, but less than 100 percent, of the fair market value of the real property to be conveyed, including any improvements thereon, the recipient of the property agrees to pay to the Secretary of Defense an amount equal to the difference in the fair market values.*

*(c) USE OF AUTHORITY.—(1) To the maximum extent practicable, the Secretary of Defense shall use the authority provided by subsection (a) to convey at least 20 percent of the total acreage conveyed each fiscal year at military installations closed or realigned under the base closure laws. Notice of the proposed use of this authority shall be provided in such manner as the Secretary may prescribe, including publication in the Federal Register and otherwise.*

*In determining such total acreage for a fiscal year, the Secretary shall exclude real property identified in a redevelopment plan as property essential to the reuse or redevlopment of a military installation closed or to be closed under a base closure law.*

*(2) To the maximum extent practicable, the Secretary of Defense shall endeavor to use the authority provided by subsection (a) to obtain military construction and military housing services having a total value of at least $200,000,000 each fiscal year for each of the military departments.*

*(3) The Secretary concerned shall utilize the authority provided in subsection (a) in lieu of obligating and expending funds appropriated for military construction and military housing projects that are authorized by law.*

*(d) DEPOSIT OF FUNDS.—The Secretary of Defense may deposit funds received under subsection (b)(2) in the Department of Defense Housing Improvement Fund established under section 2883(a) of this title.*

*(e) ANNUAL REPORT.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 a report detailing the extent to which the Secretary used the authority provided by subsection (a) to convey real property in exchange for military construction and military housing and plans for the use of such authority for the future. The report shall include the following:*

*(1) The total value of the real property that was actually conveyed during the preceding fiscal year using the authority provided by subsection (a).*

*(2) The total value of the military construction and military housing services obtained in exchange, and, if the dollar goal specified in subsection (c)(2) was not achieved for a military department, an explanation regarding the reasons why the goal was not achieved.*

*(3) The current inventory of unconveyed lands at military installations closed or realigned under a base closure law.*

*(4) A description of the results of conveyances under subsection (a) during the preceding fiscal year and plans for such conveyances for the current fiscal year, the fiscal year covered by the budget, and the period covered by the current future-years defense program under section 221 of this title.*

*(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary of Defense.*

*(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.*

## SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

Sec.
2871. Definitions.

* * * * * * *

[2883. Department of Defense Housing Funds.]
*2883. Department of Defense Housing Improvement Fund.*

* * * * * * *

**§ 2871. Definitions**

In this subchapter:

(1) * * *

[(2) The term "base closure law" means the following:

[(A) Section 2687 of this title.

[(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

[(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).]

* * * * * * *

(6) The term "Fund" means the [Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund] *Department of Defense Housing Improvement Fund* established under section 2883(a) of this title.

* * * * * * *

**§ 2875. Investments**

(a) * * *

* * * * * * *

(e) CONGRESSIONAL NOTIFICATION REQUIRED.—Amounts in the [Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund] *Department of Defense Housing Improvement Fund* may be used to make a cash investment under this section in an eligible entity only after the end of the [30-day period] *14–day period* beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress.

* * * * * * *

**§ 2880. Unit size and type**

(a) * * *

(b) INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.—(1) * * *

(2) The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter [unless the unit is located on a military installation].

* * * * * * *

**[§ 2883. Department of Defense Housing Funds**

[(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

[(1) The Department of Defense Family Housing Improvement Fund.

[(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

[(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

[(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

[(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

[(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

[(A) Amounts authorized for and appropriated to that Fund.

[(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing.

[(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

[(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

[(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

[(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

[(A) Amounts authorized for and appropriated to that Fund.

[(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

[(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

[(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

[(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.]

***§ 2883. Department of Defense Housing Improvement Fund***

*(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the Department of Defense Housing Improvement Fund (in this section referred to as the "Fund").*

*(b) CREDITS TO FUND.—There shall be credited to the Fund the following:*

*(1) Amounts authorized for and appropriated to the Fund.*

*(2) Subject to subsection (e), any amounts that the Secretary of Defense transfers, in such amounts as are provided for in appropriation Acts, to the Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing or military unaccompanied housing.*

*(3) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing or military unaccompanied housing.*

*(4) Income derived from any activities under this subchapter with respect to military family housing or military unaccompanied housing, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.*

*(5) Any amounts that the Secretary of the Navy transfers to the Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.*

*(6) Any amounts that the Secretary concerned transfers to the Fund pursuant to section 2869 of this title.*

[(d)] *(c)* USE OF AMOUNTS IN [FUNDS] *FUND*.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection [(e)] *(d)*, the Secretary of Defense may use amounts in the [Department of Defense Family Housing Improvement] Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

[(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution,

and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.]

[(3)] *(2)* Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

[(e)] *(d)* LIMITATION ON OBLIGATIONS.—The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

[(f)] *(e)* NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to [a Fund under paragraph (1)(B) or (2)(B) of subsection (c)] *the Fund under subsection (b)(2)* may be made only after the end of the [30-day period] *14–day period* beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress.

[(g)] *(f)* LIMITATION ON AMOUNT OF BUDGET AUTHORITY.—The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

(1) [$850,000,000] *$900,000,000* for the acquisition or construction of military family housing; and

* * * * * * *

**§ 2884. Reports**

(a) * * *

(b) ANNUAL REPORTS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) * * *

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year*, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future*.

[(3) A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.]

*(3) A review of activities of the Secretary under this subchapter during such preceding fiscal year, shown for military family housing, military unaccompanied housing, dual military family housing and military unaccompanied housing, and ancillary supporting facilities.*

*(4) If a contract for the acquisition or construction of military family housing, military unaccompanied housing, or dual military family housing and military unaccompanied housing entered into during the preceding fiscal year did not include the acquisition or construction of the types of ancillary supporting facilities specifically referred to in section 2871(1) of this title, a explanation of the reasons why such ancillary supporting facilities were not included.*

*(5) A description of the Secretary's plans for housing privatization activities under this subchapter (A) during the fiscal year for which the budget is submitted, and (B) during the period covered by the then-current future-years defense plan under section 221 of this title.*

* * * * * * *

## CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

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### § 2902. Strategic Environmental Research and Development Program Council

(a) * * *

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(g)[(1)] Not later than February 1 of each year, the Council shall submit to the Secretary of Defense the annual report prepared pursuant to subsection (d)(3).

[(2) Not later than March 15 of each year, the Secretary of Defense shall submit such annual report to Congress, along with such comments as the Secretary considers appropriate.]

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# Subtitle B—Army

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# PART I—ORGANIZATION

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## CHAPTER 303—DEPARTMENT OF THE ARMY

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### § 3013. Secretary of the Army

(a) * * *

* * * * * * *

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is also responsible to the Secretary of Defense for—

(1) * * *

* * * * * * *

(4) carrying out the functions of the Department of the Army so as to fulfill [(to the maximum extent practicable)] the current and future operational requirements of the unified and specified combatant commands;

* * * * * * *

## CHAPTER 307—THE ARMY

* * * * * * *

**§ 3062. Policy; composition; organized peace establishment**

(a) * * *

* * * * * * *

*(e) The Army shall be so organized as to include not less than—*

*(1) 10 active and eight National Guard combat divisions or their equivalents;*

*(2) one active armored cavalry regiment and one light cavalry regiment or their equivalents;*

*(3) 15 National Guard enhanced brigades or their equivalents; and*

*(4) such other active and reserve component land combat, rotary-wing aviation, and other services as may be required to support forces specified in paragraphs (1) through (3).*

* * * * * * *

# PART II—PERSONNEL

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## CHAPTER 345—RANK AND COMMAND

Sec.
3572. Rank: commissioned officers serving under temporary appointments.

* * * * * * *

[3583. Requirement of exemplary conduct.]

* * * * * * *

**[§ 3583. Requirement of exemplary conduct**

[All commanding officers and others in authority in the Army are required—

[(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

[(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

[(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and

[(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.]

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# PART III—TRAINING

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## CHAPTER 403—UNITED STATES MILITARY ACADEMY

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**§ 4342. Cadets: appointment; numbers, territorial distribution**

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) * * *

* * * * * * *

(6) [Two] *Three* cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

* * * * * * *

(8) [Two] *Three* cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) [One] *Two* cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

* * * * * * *

(h) The [Secretary of the Army] *Superintendent* shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

* * * * * * *

**§ 4357. Acceptance of guarantees with gifts for major projects**

(a) * * *

* * * * * * *

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Army may not accept a qualified guarantee under this section for the completion of a major project until after [the expiration of 30 days following] the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

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## Subtitle C—Navy and Marine Corps

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## PART I—ORGANIZATION

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### CHAPTER 503—DEPARTMENT OF THE NAVY

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**§ 5013. Secretary of the Navy**

(a) * * *

* * * * * * *

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy is also responsible to the Secretary of Defense for—

(1) * * *

* * * * * * *

(4) carrying out the functions of the Department of the Navy so as to fulfill [(to the maximum extent practicable)] the current and future operational requirements of the unified and specified combatant commands;

* * * * * * *

## CHAPTER 505—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

* * * * * * *

### § 5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, [from officers on the active-duty list in the line of the Navy who are eligible to command at sea and who hold the grade of rear admiral or above] *flag officers of the Navy*. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

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## CHAPTER 506—HEADQUARTERS, MARINE CORPS

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### § 5043. Commandant of the Marine Corps

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years [from officers on the active-duty list of the Marine Corps not below the grade of colonel] *general officers of the Marine Corps*. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

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## CHAPTER 507—COMPOSITION OF THE DEPARTMENT OF THE NAVY

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### § 5062. United States Navy: composition; functions

(a) * * *

* * * * * * *

*(d) The Navy, within the Department of the Navy, shall be so organized as to include—*

*(1) not less than 305 vessels in active service;*

*(2) not less than 12 aircraft carrier battle groups or their equivalents, not less than 12 amphibious ready groups or their equivalents, not less than 55 attack submarines, not less than 108 active surface combatant vessels, and not less than 8 reserve combatant vessels; and*

*(3) such other active and reserve naval combat, naval aviation, and service forces as may be required to support forces specified in paragraphs (1) and (2).*

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# PART II—PERSONNEL

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## CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.
[5582. Regular Navy: transfers, line and staff corps.]

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### [§ 5582. Regular Navy: transfers, line and staff corps

[(a) A regular officer of the Navy in a staff corps in a grade not above lieutenant commander may be appointed in the line of the Navy to the same grade.

[(b) A regular officer in the line of the Navy in a grade not above lieutenant commander may be appointed to the same grade in a staff corps under regulations prescribed by the Secretary of Defense.]

* * * * * * *

## CHAPTER 551—OFFICERS IN COMMAND

Sec.
5942. Aviation commands: eligibility.

* * * * * * *

[5947. Requirement of exemplary conduct.]

* * * * * * *

### [§ 5947. Requirement of exemplary conduct

[All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.]

* * * * * * *

## CHAPTER 571—VOLUNTARY RETIREMENT

* * * * * * *

**§ 6321. Officers: 40 years**

(a) Each officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement [after completing 40 or more years] *and has at least 40 years* of active service shall be retired by the Secretary of the Navy.

* * * * * * *

**§ 6322. Officers: 30 years**

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement [after completing 30 or more years] *and has at least 30 years* of active service may, in the discretion of the Secretary of the Navy, be retired.

* * * * * * *

**§ 6323. Officers: 20 years**

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement [after completing more than 20 years] *and has at least 20 years* of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

* * * * * * *

**§ 6326. Enlisted members: 30 years**

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement [after completing 30 or more years] *and has at least 30 years* of active service in the armed forces shall be retired by the President.

* * * * * * *

**§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay**

(a) * * *

(b) An enlisted member of the Regular Navy or the Naval Reserve [who has completed 20 or more years] *who has at least 20 years* of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve [who has completed 20 or more years] *who has at least 20 years* of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

* * * * * * *

**§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay**

(a) When he has [completed 30 years] *has at least 30 years* of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) * * *

* * * * * * *

# PART III—EDUCATION AND TRAINING

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## CHAPTER 603—UNITED STATES NAVAL ACADEMY

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### § 6954. Midshipmen: number

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h). Subject to that limitation, midshipmen are selected as follows:

(1) * * *

* * * * * * *

(6) [Two] *Three* from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

* * * * * * *

(8) [Two] *Three* from Guam, nominated by the Delegate in Congress from Guam.

(9) [One] *Two* from American Samoa nominated by the Delegate in Congress from American Samoa.

* * * * * * *

(f) The [Secretary of the Navy] *Superintendent of the Naval Academy* shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

* * * * * * *

### § 6975. Acceptance of guarantees with gifts for major projects

(a) * * *

* * * * * * *

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Navy may not accept a qualified guarantee under this section for the completion of a major project until after [the expiration of 30 days following] the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

* * * * * * *

## CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL

* * * * * * *

**§ 7045. Officers of the other armed forces; enlisted members: admission**

(a)(1) * * *

[(2) The Secretary may permit an enlisted member of the armed forces who is assigned to the Naval Postgraduate School or to a nearby command to receive instruction at the Naval Postgraduate School. Admission of enlisted members for instruction under this paragraph shall be on a space-available basis.]

*(2) The Secretary may permit enlisted members of the armed forces to receive instruction at the Naval Postgraduate School for the purpose of attending—*

*(A) executive level seminars; or*

*(B) the information security scholarship program under chapter 112 of this title.*

*(3) In addition to instruction authorized under paragraph (2), the Secretary may, on a space-available basis, permit an enlisted member of any of the armed forces to receive instruction at the Naval Postgraduate School if the member is assigned permanently to the staff of the Naval Postgraduate School or to a nearby command.*

(b) [The Department]*(1) Except as provided under paragraph (3), the Department* of the Army, the Department of the Air Force, and the Department of Homeland Security shall bear the cost of the instruction received by [officers] *members* detailed for that instruction by the Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security, respectively.

(2) In the case of an enlisted member permitted *under subsection (a)(3)* to receive instruction at the Postgraduate School *on a space-available basis*, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate [(taking into consideration the admission of enlisted members on a space-available basis)].

*(3) The Secretary of Defense may prescribe exceptions to the requirements of paragraph (1) with regard to attendance at the Postgraduate School pursuant to chapter 112 of this title.*

* * * * * * *

**§ 7049. Defense industry civilians: admission to defense product development program**

(a) * * *

* * * * * * *

(c) ANNUAL [CERTIFICATION] *DETERMINATION* BY THE SECRETARY OF THE NAVY.—Defense industry employees may receive instruction at the school during any academic year only if, before the start of that academic year, the Secretary of the Navy determines[, and certifies to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives,] that providing instruction to defense industry employees under this section during that year—

(1) * * *

* * * * * * *

## CHAPTER 609—PROFESSIONAL MILITARY EDUCATION SCHOOLS

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### § 7102. Marine Corps University: masters degrees; board of advisors

(a) * * *

* * * * * * *

*(c) COMMAND AND STAFF COLLEGE OF THE MARINE CORP UNIVERSITY.—Upon the recommendation of the Director and faculty of the Command and Staff College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of operational studies upon graduates of the Command and Staff College's School of Advanced Warfighting who fulfill the requirements for that degree.*

[(c)] *(d)* REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of the Navy.

[(d)] *(e)* BOARD OF ADVISORS.—The Secretary of the Navy shall establish a board of advisors for the Marine Corps University. The Secretary shall ensure that the board is established so as to meet all requirements of the appropriate regional accrediting association.

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# PART IV—GENERAL ADMINISTRATION

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## CHAPTER 633—NAVAL VESSELS

Sec.
7291. Classification.

* * * * * * *

*7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs.*

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### § 7296. Combatant surface vessels: notice before reduction in number; preservation of surge capability

(a) NOTICE-AND-WAIT BEFORE REDUCTIONS.—(1) * * *

* * * * * * *

[(3) Any notification under paragraph (1)(A)] *(b) CONTENT OF NOTIFICATION.—Any notification under subsection (a)(1)(A)* shall include the following:

[(A)] *(1)* The schedule for the proposed reduction.

[(B)] *(2)* The number of vessels that are to comprise the force of combatant surface vessels after the reduction.

[(C)] *(3)* A risk assessment for a force of combatant surface vessels of the number specified under [subparagraph (B)] *paragraph (2)* that is based on the same assumptions as were applied in the QDR 2001 combatant surface force risk assessment.

[(b) PRESERVATION OF SURGE CAPABILITY.—Whenever the number of combatant surface vessels is less than 116, the Secretary of the Navy shall maintain on the Naval Vessel Register a sufficient number of combatant surface vessels to enable the Navy to regain a force of combatant surface vessels numbering not less than 116 within 120 days after the date of any decision by the President to increase the number of combatant surface vessels.]

* * * * * * *

**§ 7306a. Vessels stricken from Naval Vessel Register: use for experimental purposes**

(a) * * *

(b) STRIPPING VESSEL.—(1) Before using a vessel for an experimental purpose pursuant to subsection (a), the Secretary shall carry out such stripping of the vessel as is practicable. *Material and equipment stripped from the vessel may be sold by a contractor or a designated sales agent on behalf of the Navy.*

(2) Amounts received as proceeds from the stripping of a vessel pursuant to this subsection shall be credited to appropriations available for the procurement of [scrapping services needed for such stripping. Amounts received which are in excess of amounts needed for procuring such services shall be deposited into the general fund of the Treasury.] *services needed for such stripping and for environmental remediation required for the use of the vessel for experimental purposes. Amounts received in excess of amounts needed for reimbursement of those costs shall be deposited into the account from which the stripping and environmental remediation expenses were incurred and shall be available for stripping and environmental remediation of other vessels to be used for experimental purposes.*

*(c) USE FOR EXPERIMENTAL PURPOSES DEFINED.—In this section, the term "use for experimental purposes" includes use of a vessel in a Navy sink exercise or for target purposes.*

***§ 7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs***

*(a) AUTHORITY TO MAKE TRANSFER.—The Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof for use as an artificial reef as provided in subsection (b).*

*(b) VESSEL TO BE USED AS ARTIFICIAL REEF.—An agreement for the transfer of a vessel under subsection (a) shall require that—*

*(1) the transferee use, site, construct, monitor, and manage the vessel only as an artificial reef in accordance with the requirements of the National Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), except that the transferee also may use the artificial reef to enhance diving opportunities if that use does not have an adverse effect on fishery resources; and*

*(2) the transferee shall obtain, and bear all of the responsibility for complying with, all applicable Federal, State, interstate, and local permits for siting, constructing, monitoring, and managing a vessel as an artificial reef.*

*(c) ADDITIONAL TERMS.—The Secretary may require such additional terms in connection with a conveyance authorized by this section as the Secretary considers appropriate.*

*(d) COST SHARING ON TRANSFERS.—The Secretary of the Navy may share with the recipient any of the costs associated with transferring a vessel under this section.*

*(e) APPLICATION FOR MORE THAN ONE VESSEL.—A State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, may apply for more than one vessel under this section.*

*(f) DEFINITION.—In this section, the term "fishery resources" has the meaning given such term in section 3(14) of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(14)).*

* * * * * * *

## CHAPTER 637—SALVAGE FACILITIES

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### § 7361. Authority to provide for necessary salvage facilities

(a) * * *

* * * * * * *

*(e) SALVAGE FACILITIES DEFINED.—In this section, the term "salvage facilities" includes equipment and gear utilized to prevent, abate, or minimize damage to the environment in connection with a marine salvage operation.*

* * * * * * *

### § 7363. Settlement of claims

*(a) AUTHORITY TO SETTLE CLAIM.*—The Secretary of the Navy may settle any claim by the United States for salvage services rendered by the Department of the Navy and may receive payment of any such claim.

*(b) SALVAGE SERVICES DEFINED.—In this section, the term "salvage services" includes services performed in connection with a marine salvage operation that are intended to prevent, abate, or minimize damage to the environment.*

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# Subtitle D—Air Force

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# PART I—ORGANIZATION

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## CHAPTER 803—DEPARTMENT OF THE AIR FORCE

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**§ 8013. Secretary of the Air Force**

(a) * * *

* * * * * * *

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Air Force is also responsible to the Secretary of Defense for—

(1) * * *

* * * * * * *

(4) carrying out the functions of the Department of the Air Force so as to fulfill [(to the maximum extent practicable)] the current and future operational requirements of the unified and specified combatant commands;

* * * * * * *

## CHAPTER 807—THE AIR FORCE

* * * * * * *

**§ 8062. Policy; composition; aircraft authorization**

(a) * * *

* * * * * * *

*(g) Notwithstanding subsection (e), the Air Force shall be so organized as to include not less than—*

*(1) 46 active fighter squadrons or their equivalents;*

*(2) 38 National Guard and Reserve squadrons or their equivalents;*

*(3) 96 combat-coded bomber aircraft in active service; and*

*(4) such other squadrons, reserve groups, and supporting auxiliary and reserve units as may be required to support forces specified in paragraphs (1) through (3).*

* * * * * * *

# PART II—PERSONNEL

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## CHAPTER 845—RANK AND COMMAND

Sec.
8572. Rank: commissioned officers serving under temporary appointments.
* * * * * * *
[8583. Requirement of exemplary conduct.]

* * * * * * *

**[§ 8583. Requirement of exemplary conduct**

[All commanding officers and others in authority in the Air Force are required—

[(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

[(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

[(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regu-

lations of the Air Force, all persons who are guilty of them; and

[(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.]

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# PART III—TRAINING

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## CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

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### § 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) * * *

* * * * * * *

(6) [Two] *Three* cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

* * * * * * *

(8) [Two] *Three* cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) [One] *Two* cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

* * * * * * *

(h) The [Secretary of the Air Force] *Superintendent* shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

* * * * * * *

### § 9356. Acceptance of guarantees with gifts for major projects

(a) * * *

* * * * * * *

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Air Force may not accept a qualified guarantee under this section for the completion of a major project until after [the expiration of 30 days following] the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

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## Subtitle E—Reserve Components

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# PART I—ORGANIZATION AND ADMINISTRATION

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## CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

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### § 10145. Ready Reserve: placement in

(a) * * *

* * * * * * *

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. [The Secretary concerned may not delegate his authority under the preceding sentence.] *The authority of the Secretary concerned under the preceding sentence may not be delegated—*

*(1) to a civilian officer or employee of the military department concerned below the level of the Assistant Secretary of the military department concerned; or*

*(2) to a member of the armed forces below the level of the lieutenant general or vice admiral in an armed force with responsibility for military personnel policy in that armed force.*

* * * * * * *

### § 10147. Ready Reserve: training requirements

[(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

[(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year; or

[(2) serve on active duty for training not more than 30 days during each year.]

*(a)(1) Except as provided pursuant to paragraph (2), each person who is enlisted, inducted, or appointed in an armed force and who becomes a member of the Ready Reserve under any provision of law other than section 513 or 10145(b) of this title shall be re-*

*quired, while in the Ready Reserve, to participate in a combination of drills, training periods, and active duty equivalent to 38 days (exclusive of travel) during each year.*

*(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe regulations providing specific exceptions for the requirements of paragraph (1).*

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## CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

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### § 10217. Non-dual status technicians

(a) * * *

* * * * * * *

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) Effective October 1, 2007, the total number of non-dual status technicians employed by the Army Reserve [and Air Force Reserve may not exceed 175] *may not exceed 595 and by the Air Force Reserve may not exceed 90*. If at any time after the preceding sentence takes effect the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

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# PART II—PERSONNEL GENERALLY

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## CHAPTER 1209—ACTIVE DUTY

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### § 12302. Ready Reserve

(a) * * *

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) * * *

* * * * * * *

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. [He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.]

* * * * * * *

[(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the sec-

ond fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.]

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

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## CHAPTER 1403—SELECTION BOARDS

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### § 14101. Convening of selection boards

(a) * * *

(b) [CONTINUATION BOARDS] *SELECTIVE EARLY SEPARATION BOARDS*.—Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned may convene a selection board to recommend officers of that armed force—

[(1) for continuation on the reserve active-status list under section 14701 of this title;]

[(2)] *(1)* for selective early removal from the reserve active-status list under section 14704 of this title; or

[(3)] *(2)* for selective early retirement under section 14705 of this title.

[A selection board convened under this subsection shall be known as a "continuation board".]

### § 14102. Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Secretary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. [Continuation boards] *Selection boards convened under section 14101(b) of this title* shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

* * * * * * *

## CHAPTER 1405—PROMOTIONS

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**§ 14315. Position vacancy promotions: Army and Air Force officers**

(a) OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.—A reserve officer of the Army who is in the Army Reserve, or a reserve officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, [as determined by the Secretary concerned, is available] *under regulations prescribed by the Secretary concerned, has been recommended* to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

* * * * * * *

**§ 14317. Officers in transition to and from the active-status list or active-duty list**

(a) * * *

* * * * * * *

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—[If a reserve officer] *Except as provided in subsection (e), if a reserve officer* is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty. If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

[(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title for not more than two years from the date the officer is ordered to active duty unless the President suspends the operation of this section under the provisions of section 123 or 10213 of this title.]

*(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—(1) A reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion—*

*(A) by a mandatory promotion board convened under section 14101(a) of this title or a special selection board convened under section 14502 of this title; or*

*(B) in the case of an officer who has been ordered to or is serving on active duty in support of a contingency operation, by a vacancy promotion board convened under section 14101(a) of this title.*

*(2) An officer may not be considered for promotion under this subsection after the end of the two-year period beginning on the date on which the officer is ordered to active duty.*

*(3) An officer may not be considered for promotion under this subsection during a period when the operation of this section has been suspended by the President under the provisions of section 123 or 10213 of this title.*

*(4) Consideration of an officer for promotion under this subsection shall be under regulations prescribed by the Secretary of the military department concerned.*

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

* * * * * * *

### § 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title may, subject to the needs of the service and to section 14509 of this title, be considered for continuation on the reserve active-status list **[**by a selection board convened under section 14101(b) of this title**]** *under regulations prescribed by the Secretary of Defense*.

* * * * * * *

(6) An officer who is selected for continuation on the reserve active-status list **[**as a result of the convening of a selection board under section 14101(b) of this title**]** *under regulations prescribed under paragraph (1)* but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

* * * * * * *

**[**(b) APPROVAL OF SECRETARY CONCERNED.—Continuation of an officer on the reserve active-status list under this section pursuant to action of a continuation board convened under section 14101(b) of this title is subject to the approval of the Secretary of the military department concerned.

**[**(c) INSTRUCTIONS TO CONTINUATION BOARDS.—A continuation board convened under section 14101(b) of this title to consider officers for continuation on the reserve active-status list under this section shall act in accordance with the instructions and directions provided to the board by the Secretary of the military department concerned.**]**

**[**(d)**]** *(b)* REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section.

* * * * * * *

### § 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) * * *

(b) BOARDS.—(1) If the Secretary of the Navy determines that consideration of officers for early retirement under this section is necessary, the Secretary shall convene a [continuation board] *selection board* under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

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## PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

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### CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
16131. Educational assistance program: establishment; amount.
* * * * * * *
[16137. Biennial report to Congress.]

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### [§ 16137. Biennial report to Congress

[The Secretary of Defense shall submit to Congress a report not later than March 1 of each odd-numbered year concerning the operation of the educational assistance program established by this chapter during the preceding two fiscal years. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during those fiscal years. The Secretary may submit the report more frequently and adjust the period covered by the report accordingly.]

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### CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

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### § 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties

(a) * * *

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or $500, whichever is greater, for each year of service*, plus the amount of any interest that may accrue during the current year*.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. *For the purposes of this section, any interest that has accrued on the loan for periods*

*before the current year shall be considered as within the total loan amount that shall be repaid.*

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

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**§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages**

(a) * * *

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(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before January 1, [2004] *2005*.

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## SECTION 232 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002

**SEC. 232. PROGRAM ELEMENTS FOR MISSILE DEFENSE AGENCY.**

(a) * * *

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(c) REQUIREMENT FOR ANNUAL PROGRAM GOALS.—(1) * * *

* * * * * * *

(3) Each statement of goals submitted under paragraph (1) shall set forth cost, schedule, testing, and performance goals that pertain to [each functional area program element identified in subsection (a), and each program element identified in subsection (b),] *each then-current program element for ballistic missile defense systems in effect pursuant to subsection (a) or (b)* of section 223 of title 10, United States Code.

(d) ANNUAL PROGRAM PLAN.—(1) With the submission of the statement of goals under subsection (c) for any year, the Secretary of Defense shall submit to the congressional defense committees a program of activities planned to be carried out for each missile defense program that enters engineering and manufacturing development (as defined in section 223(b)(2) of title 10, United States Code[, as added by subsection (b)]).

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## SIKES ACT

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### TITLE I—CONSERVATION PROGRAMS ON MILITARY INSTALLATIONS

* * * * * * *

SEC. 101. (a) * * *

(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) * * *

* * * * * * *

*(D) during fiscal years 2004 through 2008, in the case of a plan for a military installation in Guam, management, control, and eradication of invasive species that are not native to the ecosystem of the military installation and the introduction of which cause or may cause harm to military readiness, the environment, the economy, or human health and safety;*

[(D)] *(E)* integration of, and consistency among, the various activities conducted under the plan;

[(E)] *(F)* establishment of specific natural resource management goals and objectives and time frames for proposed action;

[(F)] *(G)* 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)] *(H)* 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)] *(I)* enforcement of applicable natural resource laws (including regulations);

[(I)] *(J)* no net loss in the capability of military installation lands to support the military mission of the installation; and

[(J)] *(K)* such other activities as the Secretary of the military department determines appropriate;

* * * * * * *

SEC. 108. (a) * * *

(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] *fiscal years 2004 through 2008*, 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] *fiscal years 2004 through 2008*, 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.

* * * * * * *

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## SECTION 4 OF THE ENDANGERED SPECIES ACT OF 1973

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) * * *

* * * * * * *

(3)*(A)* The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent [prudent and determinable] *necessary*—

[(A)] *(i)* shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

[(B)] *(ii)* may, from time-to-time thereafter as appropriate, revise such designation.

*(B)(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines that such plan addresses special management considerations or protection (as those terms are used in section 3(5)(A)(i)).*

*(ii) Nothing in this paragraph affects the requirement to consult under section 7(a)(2) with respect to an agency action (as that term is defined in that section).*

*(iii) Nothing in this paragraph affects the obligation of the Department of Defense to comply with section 9, including the prohibition preventing extinction and taking of endangered species and threatened species.*

(b) BASIS FOR DETERMINATIONS.—(1) * * *

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, *the impact on national security,* and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweight the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

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## MARINE MAMMAL PROTECTION ACT OF 1972

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DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * * * *

[(18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which—

[(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

[(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.]

*(18)(A) The term "harassment" means—*

*(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or*

*(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.*

* * * * * * *

## TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

* * * * * * *

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) * * *

* * * * * * *

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) [within a specified geographical region], the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity [within that region of small numbers] of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) * * *

* * * * * * *

*Notwithstanding the preceding sentence, the Secretary is not required to publish notice under this subparagraph with respect to in-*

*cidental takings while engaged in a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) authorized by the Secretary of Defense, except in the Federal Register.*

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity [within a specified geographical region] if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) * * *

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities [within one or more regions] is having, or may have, more than a negligible impact on the species or stock concerned.

* * * * * * *

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) [within a specific geographic region], the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment [of small numbers] of marine mammals of a species or population stock by such citizens while engaging in that activity [within that region] if the Secretary finds that such harassment during each period concerned—

(I) * * *

* * * * * * *

*(vi) Notwithstanding clause (iii), the Secretary is not required to publish notice under this subparagraph with respect to an authorization under clause (i) of incidental takings while engaged in a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) authorized by the Secretary of Defense, except in the Federal Register.*

* * * * * * *

*(f) EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this Act, if the Secretary determines that it is necessary for national defense.*

*(2) An exemption granted under this subsection—*

*(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and*

*(B) shall not be effective for more than 2 years.*

*(3)(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—*

*(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and*

*(ii) making a new determination that the additional exemption is necessary for national defense.*

*(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.*

* * * * * * *

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## SECTION 107 OF TITLE 32, UNITED STATES CODE

### § 107. Availability of appropriations

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

(1) * * *

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

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## TITLE 37, UNITED STATES CODE

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## CHAPTER 3—BASIC PAY

* * * * * * *

### § 203. Rates

(a) * * *

* * * * * * *

(d)(1) * * *

(2) Service to be taken into account for purposes of computing basic pay under paragraph (1) is as follows:

(A) Active service as a warrant officer or as a warrant officer and an [enlisted member, in the case of—

[(i) a commissioned officer on active duty who is paid from funds appropriated for active-duty personnel; or

[(ii) a commissioned officer on active Guard and Reserve duty.] *enlisted member.*

[(B) In the case of a commissioned officer (not referred to in subparagraph (A)(ii)) who is paid from funds appropriated for reserve personnel, service as a warrant officer, or as a warrant officer and enlisted member, for which at least 1,460 points have been credited to the officer for the purposes of section 12732(a)(2) of title 10.]

*(B) Service as a warrant officer, as an enlisted member, or as a warrant officer and an enlisted member, for which at least*

*1,460 points have been credited to the officer for the purposes of section 12732(a)(2) of title 10.*

* * * * * * *

**§ 209. Members of precommissioning programs**

(a) * * *

* * * * * * *

*(c) NONSCHOLARSHIP SENIOR ROTC MEMBERS NOT IN ADVANCED TRAINING.—A member of the Selected Reserve Officers' Training Corps who has entered into an agreement under section 2103a of title 10 is entitled to a monthly subsistence allowance at a rate prescribed under subsection (a). The allowance may be paid to the member for a maximum of 20 months.*

**[**(c)**]** *(d)* 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, except that the rate for a cadet or midshipman who is a member of the regular component of an armed force shall be the rate of basic pay applicable to the member under section 203 of this title.

**[**(d)**]** *(e)* 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.

* * * * * * *

## CHAPTER 5—SPECIAL AND INCENTIVE PAYS

Sec.
301. Incentive pay: hazardous duty.

* * * * * * *

*301f. Incentive pay: duty on ground in Antarctica or on Arctic icepack.*

* * * * * * *

*305b. Special pay: service as member of Weapons of Mass Destruction Civil Support Team.*

* * * * * * *

**[**314. Special pay or bonus: qualified enlisted members extending duty at designated locations overseas.**]**

*314. Special pay or bonus: qualified members extending duty at designated locations overseas.*

* * * * * * *

*326. Incentive bonus: lateral conversion bonus for service in critically short military occupational speciality.*

* * * * * * *

## § 301. Incentive pay: hazardous duty

(a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

*(3) Notwithstanding paragraphs (1) or (2), if a member described in paragraph (1) performs the duty described in clauses (3) or (4) of subsection (a) in any month, the member shall be entitled for that month to the full amount specified in the first sentence of subsection (c)(1), in the case of the duty described in clause (4) of subsection (a) or parachute jumping involving the use of a static line, or the full amount specified in the second sentence of subsection (c)(1), in the case of parachute jumping in military free fall operations.*

* * * * * * *

## § 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, 2003] *December 31, 2004*, 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.

* * * * * * *

## *§ 301f. Incentive pay: duty on ground in Antarctica or on Arctic icepack*

*(a) AVAILABILITY OF INCENTIVE PAY.—A member of the uniformed services who performs duty at a location described in subsection (b) is entitled to special pay under this section at a rate of $5 for each day of that duty.*

*(b) COVERED LOCATIONS.—Subsection (a) applies with respect to duty performed on the ground in Antarctica or on the Arctic icepack.*

* * * * * * *

## § 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, 2003] *December 31, 2004*, 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 agree-

ment by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

* * * * * * *

**§ 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, 2003] *December 31, 2004*, 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 $50,000 for any 12-month period.

* * * * * * *

**§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties**

(a) * * *

* * * * * * *

(f) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after [December 31, 2003] *December 31, 2004*.

**§ 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 September 23, 1996, and ending on [December 31, 2003] *December 31, 2004*, 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.

* * * * * * *

***§ 305b. Special pay: service as member of Weapons of Mass Destruction Civil Support Team***

*(a) AVAILABILITY OF SPECIAL PAY.—The Secretary of a military department may pay special pay under this section to a member of the armed forces under the jurisdiction of that Secretary who is entitled to basic pay under section 204 and is assigned by orders to duty as a member of a Weapons of Mass Destruction Civil Support Team.*

*(b) MONTHLY RATE.—Special pay payable under subsection (a) shall be paid at a rate equal to $150 a month.*

*(c) ELIGIBILITY OF RESERVE COMPONENT MEMBERS WHEN PERFORMING INACTIVE DUTY TRAINING.—Under regulations prescribed by the Secretary concerned and to the extent provided for in appropriation Acts, when a member of a reserve component of the armed forces who is entitled to compensation under section 206 of this title performs duty under orders as a member of a Weapons of Mass Destruction Civil Support Team, the member may be paid an increase in compensation equal to 1/30 of the monthly special pay specified in*

*subsection (b) for each day on which the member performs such duty.*

*(d) DEFINITION.—In this section, the term "Weapons of Mass Destruction Civil Support Team" means a team of members of the reserve components of the armed forces that is established under section 12310(c) of title 10 in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.*

* * * * * * *

**§ 308. Special pay: reenlistment bonus**

(a) * * *

* * * * * * *

(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, 2003] *December 31, 2004*.

**§ 308b. Special pay: reenlistment bonus for members of the Selected Reserve**

(a) * * *

* * * * * * *

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any enlisted member who, after [December 31, 2003] *December 31, 2004*, reenlists or voluntarily extends his enlistment in a reserve component.

**§ 308c. Special pay: bonus for enlistment in the Selected Reserve**

(a) * * *

* * * * * * *

(e) No bonus may be paid under this section to any enlisted member who, after [December 31, 2003] *December 31, 2004*, enlists in the Selected Reserve of the Ready Reserve of an armed force.

* * * * * * *

**§ 308d. Special pay: enlisted members of the Selected Reserve assigned to certain high priority units**

(a) * * *

* * * * * * *

(c) Additional compensation may not be paid under this section for inactive duty performed after [December 31, 2003] *December 31, 2004*.

**§ 308e. Special pay: bonus for reserve affiliation agreement**

(a) * * *

* * * * * * *

(e) No bonus may be paid under this section to any person for a reserve obligation agreement entered into after [December 31, 2003] *December 31, 2004*.

* * * * * * *

**§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve**

(a) * * *

* * * * * * *

(g) TERMINATION OF AUTHORITY.—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, 2003] *December 31, 2004*.

**§ 308i. Special pay: prior service enlistment bonus**

(a) * * *

* * * * * * *

(f) TERMINATION OF AUTHORITY.—No bonus may be paid under this section to any person for an enlistment after [December 31, 2003] *December 31, 2004*.

**§ 309. Special pay: enlistment bonus**

(a) * * *

* * * * * * *

(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, 2003] *December 31, 2004*.

**§ 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;

[(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.]

*(a) ELIGIBILITY AND SPECIAL PAY AMOUNT.—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—*

*(1) the member was entitled to basic pay or compensation under section 204 or 206 of this title; and*

*(2) the member—*

*(A) was subject to hostile fire or explosion of hostile mines;*

*(B) was on duty in an area in which the member was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period the member was on duty in the area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;*

*(C) was killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; or*

*(D) was on duty in a foreign area in which the member was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.*

*(b) CONTINUATION DURING HOSPITALIZATION.—A member covered by subsection (a)(2)(C) who is hospitalized for the treatment of the injury or wound may be paid special pay under this section for not more than three additional months during which the member is so hospitalized.*

**[**(b)**]** *(c) LIMITATIONS AND ADMINISTRATION.*—(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.

* * * * * * *

**[**(c)**]** *(d) DETERMINATIONS OF FACT.*—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.

**§ 312. Special pay: nuclear-qualified officers extending period of active duty**

(a) * * *

* * * * * * *

(e) The provisions of this section shall be effective only in the case of officers who, on or before **[**December 31, 2003**]** *December 31, 2004*, execute the required written agreement to remain in active service.

* * * * * * *

**§ 312b. Special pay: nuclear career accession bonus**

(a) * * *

* * * * * * *

(c) The provisions of this section shall be effective only in the case of officers who, on or before **[**December 31, 2003**]** *December 31, 2004*, have been accepted for training for duty in connection

with the supervision, operation, and maintenance of naval nuclear propulsion plants.

**§ 312c. Special pay: nuclear career annual incentive bonus**

(a) * * *

* * * * * * *

(d) For the purposes of this section, a "nuclear service year" is any fiscal year beginning before [December 31, 2003] *December 31, 2004*.

**[§ 314. Special pay or bonus: qualified enlisted members extending duty at designated locations overseas]**

***§ 314. Special pay or bonus: qualified members extending duty at designated locations overseas***

(a) COVERED MEMBERS.—This section applies with respect to [an enlisted member] *a member* of an armed force who—

(1) * * *

* * * * * * *

(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] *a member* described in subsection (a), the member is entitled, at the election of the Secretary concerned, to either—

(1) * * *

* * * * * * *

**§ 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] *one 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] *one 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 Homeland Security 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 Homeland Security 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.]

* * * * * * *

(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, 2003] *December 31, 2004*, and no agreement under this section may be entered into after that date.

**§ 324. Special pay: accession bonus for new officers in critical skills**

(a) ACCESSION BONUS AUTHORIZED.—Under regulations prescribed by the Secretary concerned, a person who executes a written agreement to accept a commission *or an appointment* as an officer of the armed forces and serve on active duty in a designated critical officer skill for the period specified in the agreement may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

* * * * * * *

(f) REPAYMENT FOR FAILURE TO COMMENCE OR COMPLETE OBLIGATED SERVICE.—(1) An individual who, after having received all or part of the accession bonus under an agreement referred to in subsection (a), fails to accept a commission *or an appointment* as an officer or to commence or complete the total period of active duty service specified in the agreement shall repay to the United States the amount that bears the same ratio to the total amount of the bonus authorized for such person as the unserved part of the period of agreed active duty service bears to the total period of the agreed active duty service. However, the amount required to be repaid by the individual may not exceed the amount of the accession bonus that was paid to the individual.

* * * * * * *

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after [December 31, 2003] *December 31, 2004*.

* * * * * * *

***§ 326. Incentive bonus: lateral conversion bonus for service in critically short military occupational speciality***

*(a) INCENTIVE BONUS AUTHORIZED.—The Secretary concerned may pay a bonus under this section to a member of the armed forces who executes a written agreement to convert to, and serve for a period of not less than two years in, a critically short military occupational specialty.*

*(b) ELIGIBLE MEMBERS.—A bonus may only be paid under this section only to a member who—*

*(1) is entitled to basic pay; and*

*(2) is serving in pay grade E–6 (with less than 10 years of service computed under section 205 of this title) or pay grade E–5 or below (regardless of years of service) at the time the agreement under subsection (a) is executed.*

*(c) AMOUNT AND PAYMENT OF BONUS.—(1) A bonus under this section may not exceed $4,000.*

*(2) A bonus payable under this section shall be disbursed in one lump sum payment when the member's conversion to the critically short military occupational specialty is approved by the personnel chief of the member's armed force.*

*(d) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—A bonus paid to a member under this section is in addition to any other pay and allowances to which the member is entitled.*

*(e) REPAYMENT OF BONUS.—(1) A member who receives a bonus under this section and who, voluntarily or because of misconduct, fails to serve in the critically short military occupational specialty for the period specified in the agreement shall refund to the United States an amount that bears the same ratio to the bonus amount paid to the member 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 the agreement for which a bonus was paid under this section shall not discharge the person signing such agreement from the debt arising under paragraph (1).*

*(4) Under regulations prescribed pursuant to subsection (f), the Secretary concerned may waive, in whole in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.*

*(f) 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.*

*(g) DEFINITION.—In this section, the term "critically short military occupational specialty" means a military occupational specialty, military rating, or other military speciality designated by the Secretary concerned as undermanned for purposes of this section.*

*(h) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after December 31, 2004.*

## CHAPTER 7—ALLOWANCES

Sec.
401. Definitions.

* * * * * * *

[436. Per diem allowance for lengthy or numerous deployments.]
*436. Monthly high-deployment allowance for lengthy or numerous deployments.*

* * * * * * *

### § 402. Basic allowance for subsistence

(a) * * *

(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] *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) * * *

* * * * * * *

*(f) SPECIAL RULE FOR HIGH-COST DUTY LOCATIONS AND OTHER UNIQUE AND UNUSUAL CIRCUMSTANCES.—The Secretary of Defense may authorize a member of the armed forces who is assigned to duty in a high-cost duty location or under other unique and unusual circumstances, but is not entitled to the meals portion of the per diem in connection with that duty, to receive any or all of the following:*

*(1) Meals at no cost to the member, regardless of the entitlement of the member to a basic allowance for subsistence under subsection (a).*

*(2) A basic allowance for subsistence at the standard rate, regardless of the entitlement of the member for all meals or select meals during the duty day.*

*(3) A supplemental subsistence allowance at a rate higher than the basic allowance for subsistence rates in effect under this section, regardless of the entitlement of the member for all meals or select meals during the duty day.*

[(f)] *(g)* 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)] *(h)* 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.

* * * * * * *

**§ 406. Travel and transportation allowances: dependents; baggage and household effects**

(a) * * *

(b)(1)(A) * * *

(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) * * *

* * * * * * *

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. *In the case of the transportation of a motor vehicle arranged by the member under section 2634(h) of title 10, the Secretary concerned may pay the member, upon proof of shipment, a monetary allowance in lieu of transportation, as established under section 404(d)(1) of this title.*

* * * * * * *

(h)(1) * * *

* * * * * * *

*(4)(A) The Secretary concerned shall provide to the dependents of a member the travel and transportation allowances described in paragraphs (1) and (3) in a case in which—*

*(i) a commander has substantiated that the member has committed dependent abuse, as defined in section 1059(c) of title 10;*

*(ii) a safety plan and counseling have been provided;*

*(iii) there has been a determination that the victim's safety is at stake and that relocation is the best course of action; and*

*(iv) the abused dependent, or parent of the abused dependent if the abused dependent is a child, requests relocation,*

*(B) In the case of allowances paid under subparagraph (A), any monetary allowances shall accrue to the dependents in lieu of the member and may be paid to the dependents.*

*(C) Shipment of the dependent's baggage and household effects, and of any motor vehicle, may not be provided until there is a property division established by written agreement with the member or by order of a court of competent jurisdiction.*

* * * * * * *

**§ 430. Travel and transportation: dependent children of members stationed overseas**

(a) * * *

(b) ALLOWANCE AUTHORIZED.—(1) * * *

(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 *or during a different period in the same fiscal year selected by the member*. The amount of the payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage.

* * * * * * *

**[§ 436. Per diem allowance for lengthy or numerous deployments]**

***§ 436. Monthly high-deployment allowance for lengthy or numerous deployments***

[(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. The Secretary shall pay the allowance from appropriations available for operation and maintenance for the armed force in which the member serves.]

*(a) MONTHLY ALLOWANCE.—The Secretary of the military department concerned shall pay a high-deployment allowance to a member of the armed forces under the Secretary's jurisdiction for each month during which the member—*

*(1) is deployed; and*

*(2) at any time during that month—*

*(A) has been deployed for 191 or more consecutive days (or a lower number of consecutive days prescribed by the Secretary of Defense);*

*(B) has been deployed, out of the preceding 730 days, for a total of 401 or more days (or a lower number of days prescribed by the Secretary of Defense); or*

*(C) in the case of a member of a reserve component, is on active duty under a call or order to active duty for a period of more than 30 days that is the second (or later) such call or order to active duty (whether voluntary or involuntary) for that member in support of the same contingency operation.*

* * * * * * *

[(c) AMOUNT OF PER DIEM.—The amount of the high-deployment per diem payable to a member under this section is $100.]

*(c) RATE.—The monthly rate of the allowance payable to a member under this section shall be determined by the Secretary concerned, not to exceed $1,000 per month.*

(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] *allowance* 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] *allowance* may be paid under this section to a member for any [day on] *month during* which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.

*(g) AUTHORITY TO EXCLUDE CERTAIN DUTY ASSIGNMENTS.—The Secretary concerned may exclude members serving in specified duty assignments from eligibility for the high-deployment allowance while serving in those assignments. Any such specification of duty*

*assignments may only be made with the approval of the Secretary of Defense. Specification of a particular duty assignment for purposes of this subsection may not be implemented so as to apply to the member serving in that position at the time of such specification.*

* * * * * * *

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## SECTION 521 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

**SEC. 521. AWARD OF PURPLE HEART TO PERSONS WOUNDED WHILE HELD AS PRISONERS OF WAR BEFORE APRIL 25, 1962.**

(a) * * *

[(b) STANDARDS FOR AWARD.—An award of the Purple Heart under subsection (a) shall be made in accordance with the standards in effect on the date of the enactment of this Act for the award of the Purple Heart to persons wounded on or after April 25, 1962.]

*(b) STANDARDS AND PROCEDURES FOR AWARD.—In determining whether a former prisoner of war is eligible for the award of the Purple Heart under subsection (a), the Secretary concerned shall apply the following procedures:*

*(1) The standard to be used by the Secretary concerned for awarding the Purple Heart under this section shall be to award the Purple Heart in any case in which a prisoner of war (A) was wounded while in captivity, or (B) while in captivity was subjected to systematic and prolonged deprivation of food, medical treatment, and other forms of deprivation or mistreatment likely to have prolonged aftereffects on the individual concerned.*

*(2) When a former prisoner of war applies for the Purple Heart under subsection (a), the Secretary concerned may request the former prisoner of war to provide any documentation that the Secretary would otherwise require, but failure of the former prisoner of war to provide such documentation shall not by itself be a disqualification for award of the Purple Heart.*

*(3) The Secretary concerned shall inform the former prisoner of war that historical information as to the prison camp or other circumstances in which the former prisoner of war was held captive and other information as to the circumstances of the former prisoner of war's captivity may be considered by the Secretary in evaluating the application for the award of the Purple Heart and that the former prisoner of war may submit such information.*

*(4) The Secretary concerned shall provide assistance to the applicant for the Purple Heart in obtaining information referred to in paragraph (3).*

*(5) The Secretary shall review a completed application under this section based upon the totality of the evidence presented and shall take into account the length of time between the period during which the applicant was held as a prisoner of war and the date of the application.*

*(6) In considering an application under this section, the Secretary shall take into account the length of time that the ap-*

*plicant was held in captivity, which while not in itself establishing entitlement of the applicant to award of the Purple Heart, can and should be a factor in determining whether a former prisoner of war was likely to have been wounded, starved, or denied medical treatment to the extent likely to have prolonged aftereffects on the individual concerned.*

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## TITLE 5, UNITED STATES CODE

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# PART III—EMPLOYEES

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### Subpart I—Miscellaneous

95. Personnel flexibilities relating to the Internal Revenue Service ..... 9501

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*99. Department of Defense National Security Personnel System ..... 9901*

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## Subpart D—Pay and Allowances

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### CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

* * * * * * *

**§ 5304. Locality-based comparability payments**

(a) * * *

* * * * * * *

(g)(1) * * *

(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

(A) positions under [subparagraphs (A)–(E)] *subparagraphs (A)–(D)* of subsection (h)(1); and

(B) any positions under [subsection (h)(1)(F)] *subsection (h)(1)(D)* which the President may determine.

(h)(1) For the purpose of this subsection, the term "position" means—

(A) * * *

[(B) a Senior Executive Service position under section 3132;

[(C) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151;]

[(D)] *(B)* a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

[(E)] *(C)* a position to which section 5372a applies (relating to contract appeals board members); and

[(F)] *(D)* a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;

but does not include—

(i) * * *

(ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions); [or]

(iii) a position to which subchapter II applies (relating to the Executive Schedule)[.]*;*

*(iv) a Senior Executive Service position under section 3132;*

*(v) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151; or*

*(vi) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d).*

(2)(A) * * *

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under [subparagraphs (A) through (E)] *subparagraphs (A) through (C)* of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under [clause (i) or (ii)] *clause (i), (ii), (iii), (iv), (v), or (vii)* of such paragraph); and

(ii) with respect to the positions under [paragraph (1)(F)] *paragraph (1)(D)*, such positions as may be considered appropriate (excluding any under [clause (i) or (ii)] *clause (i), (ii), (iii), (iv), (v), or (vi)* of paragraph (1)).

* * * * * * *

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

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**§ 5343. Prevailing rate determinations; wage schedules; night differentials**

(a) * * *

* * * * * * *

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide—

(1) * * *

* * * * * * *

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards*, and for any hardship or hazard related to*

*asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970*;

* * * * * * *

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

* * * * * * *

**§ 5379. Student loan repayments**

(a) * * *

(b)(1) * * *

(2) Payments under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned, except that the amount paid by an agency under this section may not exceed—

(A) [$6,000] *$10,000* for any employee in any calendar year; or

* * * * * * *

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

* * * * * * *

**[§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service**

[(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

[(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable under section 5376 and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373 of this title.

[(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate.

[(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.]

***§ 5382. Establishment of rates of pay for the Senior Executive Service***

*(a) Subject to regulations prescribed by the Office of Personnel Management, there shall be established a range of rates of basic pay*

*for the Senior Executive Service, and each senior executive shall be paid at one of the rates within the range, based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. The lowest rate of the range shall not be less than the minimum rate of basic pay payable under section 5376, and the highest rate, for any position under this system or an equivalent system as determined by the President's Pay Agent designated under section 5304(d), shall not exceed the rate for level III of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373.*

*(b) Notwithstanding the provisions of subsection (a), the applicable maximum shall be level II of the Executive Schedule for any agency that is certified under section 5307 as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance.*

*(c) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under subsection (b) to an agency with an applicable maximum rate of pay prescribed under subsection (a).*

**§ 5383. Setting individual senior executive pay**

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, **[**which of the rates established under section 5382 of this title**]** *which of the rates within a range established under section 5382* shall be paid to each senior executive under such appointing authority.

* * * * * * *

(c) Except **[**for any pay adjustment under section 5382 of this title**]** *as provided in regulations prescribed by the Office under section 5385*, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

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## CHAPTER 55—PAY ADMINISTRATION

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### SUBCHAPTER I—GENERAL PROVISIONS

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**§ 5504. Biweekly pay periods; computation of pay**

(a) The pay period for an employee covers two administrative workweeks. **[**For the purpose of this subsection, "employee" means—

**[**(1) an employee in or under an Executive agency;

**[**(2) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

**[**(3) an individual employed by the government of the District of Columbia;

but does not include—

[(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

[(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.]

(b) When, in the case of an employee, it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

(1) * * *

* * * * * * *

Rates are computed to the nearest cent, counting one-half and over as a whole cent. [For the purpose of this subsection, "employee" means—

[(A) an employee in or under an Executive agency;

[(B) an employee in or under the judicial branch;

[(C) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

[(D) an individual employed by the government of the District of Columbia;

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.]

*(c) For the purposes of this section:*

*(1) The term "employee" means—*

*(A) an employee in or under an Executive agency;*

*(B) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and*

*(C) an individual employed by the government of the District of Columbia.*

*(2) The term "employee" does not include—*

*(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or*

*(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by clauses (ii), (iii), and (xiv) through (xvii) of such section.*

*(3) Notwithstanding paragraph (2), an individual who otherwise would be excluded from the definition of employee shall be deemed to be an employee for purposes of this section if the individual's employing agency so elects, under guidelines in regulations promulgated by the Office of Personnel Management under subsection (d)(2).*

[(c)] *(d)(1)* The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

*(2) The Office of Personnel Management shall provide guidelines by regulation for exemptions to be made by the heads of agen-*

*cies under subsection (c)(3). Such guidelines shall provide for such exemptions only under exceptional circumstances.*

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SUBCHAPTER V—PREMIUM PAY

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**§ 5542. Overtime rates; computation**

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) * * *

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to *the greater of* one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) *or the hourly rate of basic pay of the employee*, and all that amount is premium pay.

* * * * * * *

**§ 5545. Night, standby, irregular, and hazardous duty differential**

(a) * * *

* * * * * * *

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard*, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970*. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical

hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) * * *

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## Subpart E—Attendance and Leave

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### CHAPTER 63—LEAVE

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SUBCHAPTER II—OTHER PAID LEAVE

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**§ 6323. Military leave; Reserves and National Guardsmen**

(a) * * *

(b) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) * * *

(2)*(A)* performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—

**[**(A)**]** *(i)* Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or

**[**(B)**]** *(ii)* full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; *or*

*(B) performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10;*

* * * * * * *

## Subpart F—Labor-Management and Employee Relations

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### CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.
7301. Presidential regulations.
*7302. Post-employment notification.*

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SUBCHAPTER I—REGULATION OF CONDUCT

* * * * * * *

***§ 7302. Post-employment notification***

*(a) Not later than the effective date of the amendments made by sections 3 and 4 of the Federal Employees Pay for Performance Act of 2003, or 180 days after the date of enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.*

*(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.*

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## Subpart G—Insurance and Annuities

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### CHAPTER 89—HEALTH INSURANCE

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**§ 8905a. Continued coverage**

(a) * * *

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(d)(1) * * *

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(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position 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)⟧ *section 4421 of the Atomic Energy Defense Act—*

(i) * * *

* * * * * * *

### CHAPTER 90—LONG-TERM CARE INSURANCE

* * * * * * *

**§ 9001. Definitions**

For purposes of this chapter:

(1) EMPLOYEE.—The term "employee" means—

(A) * * *

* * * * * * *

(D) an employee of a nonappropriated fund instrumentality of the Department of Defense described in section [2105(c),

but does not include an individual employed by the government of the District of Columbia (other than an employee of the District of Columbia Courts).] *2105(c).*

(2) ANNUITANT.—The term "annuitant" means—

(A) any individual who would satisfy the requirements of paragraph (3) of section 8901 if, for purposes of such paragraph, the term "employee" were considered to have the meaning given to it under paragraph (1) of this subsection; [and]

(B) any individual who—

(i) * * *

(iii) would not (but for this subparagraph) otherwise satisfy the requirements of this paragraph[.]*; and*

*(C) any former employee who, on the basis of his or her service, would meet all requirements for being considered an "annuitant" within the meaning of subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government, but for the fact that such former employee has not attained the minimum age for title to annuity.*

* * * * * * *

(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term "retired member of the uniformed services" means a member or former member of the uniformed services entitled to retired or retainer pay, [including a member or former member retired under chapter 1223 of title 10 who has] *and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having* attained the age of 60 and who satisfies such eligibility requirements as the Office of Personnel Management prescribes under section 9008.

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## Subpart I—Miscellaneous

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# *CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM*

*Sec.*
*9901. Definitions.*
*9902. Establishment of human resources management system.*
*9903. Attracting highly qualified experts.*
*9904. Employment of older Americans.*
*9905. Special pay and benefits for certain employees outside the United States.*

### *§ 9901. Definitions*

*For purposes of this chapter—*

*(1) the term "Director" means the Director of the Office of Personnel Management; and*

*(2) the term "Secretary" means the Secretary of Defense.*

### *§ 9902. Establishment of human resources management system*

*(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. If the Secretary certifies that issuance or adjustment of a regulation, or the inclusion, exclusion, or modification of a particular provision therein, is essential to the national security, the Secretary may, subject to the decision of the President, waive the requirement in the preceding sentence that the regulation or adjustment be issued jointly with the Director.*

*(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—*

*(1) be flexible;*

*(2) be contemporary;*

*(3) not waive, modify, or otherwise affect—*

*(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;*

*(B) any provision of section 2302, relating to prohibited personnel practices;*

*(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or*

*(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—*

*(I) providing for equal employment opportunity through affirmative action; or*

*(II) providing any right or remedy available to any employee or applicant for employment in the public service;*

*(D) any other provision of this part (as described in subsection (c)); or*

*(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;*

*(4) ensure that employees may organize, bargain collectively as provided for in this chapter, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of this chapter and any exclusion from coverage or limitation on negotiability established pursuant to law;*

*(5) not be limited by any specific law or authority under this title that is waivable under this chapter or by any provision of this chapter or any rule or regulation prescribed under this title that is waivable under this chapter, except as specifically provided for in this section; and*

*(6) include a performance management system that incorporates the following elements:*

*(A) adherence to merit principles set forth in section 2301;*

*(B) a fair, credible, and transparent employee performance appraisal system;*

*(C) a link between the performance management system and the agency's strategic plan;*

*(D) a means for ensuring employee involvement in the design and implementation of the system;*

*(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;*

*(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;*

*(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and*

*(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.*

*(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part referred to in subsection (b)(3)(D) are (to the extent not otherwise specified in this title)—*

*(1) subparts A, B, E, G, and H of this part; and*

*(2) chapters 41, 45, 47, 55 (except subchapter V thereof), 57, 59, 72, 73, and 79, and this chapter.*

*(d) LIMITATIONS RELATING TO PAY.—(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53 of this title.*

*(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 of this title or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed the total annual compensation payable to the Vice President under section 104 of title 3.*

*(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.*

*(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—(1) In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary and the Director shall provide for the following:*

*(A) The Secretary and the Director shall, with respect to any proposed system or adjustment—*

*(i) provide to the employee representatives representing any employees who might be affected a written description of the proposed system or adjustment (including the reasons why it is considered necessary);*

*(ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and*

*(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.*

*(B) Following receipt of recommendations, if any, from such employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—*

*(i) notify Congress of those parts of the proposal, together with the recommendations of the employee representatives;*

*(ii) meet and confer for not less than 30 calendar days with the employee representatives, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and*

*(iii) at the Secretary's option, or if requested by a majority of the employee representatives participating, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.*

*(C)(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which the recommendations are accepted by the Secretary and the Director, may be implemented immediately.*

*(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary, in his discretion, determines that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts (including any modifications made in response to the recommendations as the Secretary determines advisable), but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable).*

*(iii) The Secretary shall notify Congress promptly of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and of the reasons why implementation is appropriate under this subparagraph.*

*(D) If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—*

*(i) develop a method for the employee representatives to participate in any further planning or development which might become necessary; and*

*(ii) give the employee representatives adequate access to information to make that participation productive.*

*(2) The Secretary may, at the Secretary's discretion, engage in any and all collaboration activities described in this subsection at an organizational level above the level of exclusive recognition.*

*(3) In the case of any employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary and the Director may develop procedures for representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of this subsection.*

*(f) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—(1) Any human resources management system implemented or modified under this chapter may include employees of the Department of Defense from any bargaining unit with respect to which a labor organization has been accorded exclusive recognition under chapter 71 of this title.*

*(2) For any bargaining unit so included under paragraph (1), the Secretary may bargain at an organizational level above the level of exclusive recognition. Any such bargaining shall—*

*(A) be binding on all subordinate bargaining units at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;*

*(B) supersede all other collective bargaining agreements, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;*

*(C) not be subject to further negotiations for any purpose, including bargaining at the level of recognition, except as provided for by the Secretary; and*

*(D) except as otherwise specified in this chapter, not be subject to review or to statutory third-party dispute resolution procedures outside the Department of Defense.*

*(3) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this subsection.*

*(4) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.*

*(g) PROVISIONS RELATING TO APPELLATE PROCEDURES.—(1) The Secretary shall—*

*(A) establish an appeals process that provides that employees of the Department of Defense are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and*

*(B) in prescribing regulations for any such appeals process—*

*(i) ensure that employees of the Department of Defense are afforded the protections of due process; and*

*(ii) toward that end, be required to consult with the Merit Systems Protection Board before issuing any such regulations.*

*(2) Any regulations establishing the appeals process required by paragraph (1) that relate to any matters within the purview of chapter 77 shall—*

*(A) provide for an independent review panel, appointed by the President, which shall not include the Secretary or the Deputy Secretary of Defense or any of their subordinates;*

*(B) be issued only after—*

*(i) notification to the appropriate committees of Congress; and*

*(ii) consultation with the Merit Systems Protection Board and the Equal Employment Opportunity Commission;*

*(C) ensure the availability of procedures that—*

*(i) are consistent with requirements of due process; and*

*(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Defense; and*

*(D) modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department of Defense.*

*(h) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.*

*(2) For purposes of this section, the term "employee" means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—*

*(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of this title, or another retirement system for employees of the Federal Government;*

*(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in paragraph (1); or*

*(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.*

*(3) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in ac-*

*cordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved pursuant to the program established under subsection (a).*

*(4)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—*

*(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of this title, if the employee were entitled to payment under such section; or*

*(ii) $25,000.*

*(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of this title, based on any other separation.*

*(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (5).*

*(5)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.*

*(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–236; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105 of this title) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.*

*(6) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.*

*(i) PROVISIONS RELATING TO REEMPLOYMENT.—If annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.*

*(j) ADDITIONAL PROVISIONS RELATING TO PERSONNEL MANAGEMENT.—Notwithstanding subsection (c), the Secretary may exercise authorities that would otherwise be available to the Secretary under paragraphs (1), (3), and (8) of section 4703(a) of this title.*

### *§ 9903. Attracting highly qualified experts*

*(a) IN GENERAL.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.*

*(b) AUTHORITY.—Under the program, the Secretary may—*

*(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101 of this title) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;*

*(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 this title, as increased by locality-based comparability payments under section 5304 of this title, notwithstanding any provision of this 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 limits applicable to the employee under subsection (d).*

*(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 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 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense's national security missions.*

*(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:*

*(A) $50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.*

*(B) The amount equal to 50 percent of the employee's annual rate of basic pay.*

*For purposes of this paragraph, the term "base quarter" has the meaning given such term by section 5302(3).*

*(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.*

*(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.*

*(e) SAVINGS PROVISIONS.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—*

*(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 this section before the termination of the program; and*

*(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.*

### *§ 9904. Employment of older Americans*

*(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may appoint older Americans into positions in the excepted service for a period not to exceed 2 years, provided that—*

*(1) any such appointment shall not result in—*

*(A) the displacement of individuals currently employed by the Department of Defense (including partial displacement through reduction of nonovertime hours, wages, or employment benefits); or*

*(B) the employment of any individual when any other person is in a reduction-in-force status from the same or substantially equivalent job within the Department of Defense; and*

*(2) the individual to be appointed is otherwise qualified for the position, as determined by the Secretary.*

*(b) EFFECT ON EXISTING RETIREMENT BENEFITS.—Notwithstanding any other provision of law, an individual appointed pursuant to subsection (a) who otherwise is receiving an annuity, pension, retired pay, or other similar payment shall not have the amount of said annuity, pension, or other similar payment reduced as a result of such employment.*

*(c) EXTENSION OF APPOINTMENT.—Notwithstanding subsection (a), the Secretary may extend an appointment made pursuant to this section for up to an additional 2 years if the individual employee possesses unique knowledge or abilities that are not otherwise available to the Department of Defense.*

*(d) DEFINITION.—For purposes of this section, the term "older American" means any citizen of the United States who is at least 55 years of age.*

### *§ 9905. Special pay and benefits for certain employees outside the United States*

*The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—*

*(1) allowances and benefits—*

*(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or*

*(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and*

*(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).*

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## SECTION 1404 OF THE DEFENSE DEPENDENTS' EDUCATION ACT OF 1978

[TUITION-PAYING STUDENTS]

*SPACE-AVAILABLE ENROLLMENT OF STUDENTS; TUITION*

SEC. 1404. (a) * * *

* * * * * * *

(c)*(1)* 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.

*(2)(A) The Secretary shall include in the regulations prescribed under this subsection a requirement that children in the class of children described in subparagraph (B) shall be subject to the same tuition requirements, or waiver of tuition requirements, as children in the class of children described in subparagraph (C).*

*(B) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—*

*(i) are on active duty under an order to active duty under section 12301 or 12302 of title 10, United States Code;*

*(ii) were ordered to active duty from a location in the United States (other than in Alaska or Hawaii); and*

*(iii) are serving on active duty outside the United States or in Alaska or Hawaii in a tour of duty that (voluntarily or involuntarily) has been extended to a period in excess of one year.*

*(C) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—*

*(i) are on active duty under an order to active duty under section 12301 or 12302 of title 10, United States Code;*

*(ii) were ordered to active duty from a location outside the United States (or in Alaska or Hawaii); and*

*(iii) are serving on active duty outside the United States or in Alaska or Hawaii.*

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## TITLE 38, UNITED STATES CODE

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## PART I—GENERAL PROVISIONS

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## CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

Sec.
301. Department.

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*320. Department of Veterans Affairs-Department of Defense Joint Executive Committee.*

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### *§ 320. Department of Veterans Affairs-Department of Defense Joint Executive Committee*

*(a) JOINT EXECUTIVE COMMITTEE.—(1) There is established an interagency committee to be known as the Department of Veterans Affairs-Department of Defense Joint Executive Committee (hereinafter in this section referred to as the "Committee").*

*(2) The Committee is composed of—*

*(A) the Deputy Secretary of Veterans Affairs and such other officers and employees of the Department of Veterans Affairs as the Secretary of Veterans Affairs may designate; and*

*(B) the Under Secretary of Defense for Personnel and Readiness and such other officers and employees of the Department of Defense as the Secretary of Defense may designate.*

*(b) ADMINISTRATIVE MATTERS.—(1) The Deputy Secretary of Veterans Affairs and the Under Secretary of Defense shall determine the size and structure of the Committee, as well as the administrative and procedural guidelines for the operation of the Committee.*

*(2) The two Departments shall supply appropriate staff and resources to provide administrative support and services. Support for such purposes shall be provided at a level sufficient for the efficient operation of the Committee, including a subordinate Health Executive Committee, a subordinate Benefits Executive Committee, and such other committees or working groups as considered necessary by the Deputy Secretary and Under Secretary.*

*(c) RECOMMENDATIONS.—(1) The Committee shall recommend to the Secretaries strategic direction for the joint coordination and sharing efforts between and within the two Departments under section 8111 of this title and shall oversee implementation of those efforts.*

*(2) The Committee shall submit to the two Secretaries and to Congress an annual report containing such recommendations as the Committee considers appropriate.*

*(d) FUNCTIONS.—In order to enable the Committee to make recommendations in its annual report under subsection (c)(2), the Committee shall do the following:*

*(1) Review existing policies, procedures, and practices relating to the coordination and sharing of resources between the two Departments.*

*(2) Identify changes in policies, procedures, and practices that, in the judgment of the Committee, would promote mutually beneficial coordination, use, or exchange of use of services and resources of the two Departments, with the goal of improving the quality, efficiency and effectiveness of the delivery of benefits and services to veterans, service members, military retirees and their families through an enhanced Department of Veterans Affairs and Department of Defense partnership.*

*(3) Identify and assess further opportunities for the coordination and collaboration between the Departments that, in the judgment of the Committee, would not adversely affect the range of services, the quality of care, or the established priorities for benefits provided by either Department.*

*(4) Review the plans of both Departments for the acquisition of additional resources, especially new facilities and major equipment and technology, in order to assess the potential effect of such plans on further opportunities for the coordination and sharing of resources.*

*(5) Review the implementation of activities designed to promote the coordination and sharing of resources between the Departments.*

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# PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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## CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED–USE LEASES OF REAL PROPERTY

* * * * * * *

### § 8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

(a) * * *

(b) JOINT REQUIREMENTS FOR SECRETARIES OF VETERANS AFFAIRS AND DEFENSE.—To facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the

two Departments, the two Secretaries shall carry out the following functions:

(1) * * *

(2) Jointly fund the interagency committee provided for under [subsection (c)] *section 320 of this title*.

* * * * * * *

[(c) DOD–VA HEALTH EXECUTIVE COMMITTEE.—(1) There is established an interagency committee to be known as the Department of Veterans Affairs-Department of Defense Health Executive Committee (hereinafter in this section referred to as the "Committee"). The Committee is composed of—

[(A) the Deputy Secretary of Veterans Affairs and such other officers and employees of the Department of Veterans Affairs as the Secretary of Veterans Affairs may designate; and

[(B) the Under Secretary of Defense for Personnel and Readiness and such other officers and employees of the Department of Defense as the Secretary of Defense may designate.

[(2)(A) During odd-numbered fiscal years, the Deputy Secretary of Veterans Affairs shall chair the Committee. During even-numbered fiscal years, the Under Secretary of Defense shall chair the Committee.

[(B) The Deputy Secretary and the Under Secretary shall determine the size and structure of the Committee, as well as the administrative and procedural guidelines for the operation of the Committee. The two Departments shall share equally the Committee's cost of personnel and administrative support and services. Support for such purposes shall be provided at a level sufficient for the efficient operation of the Committee, including a permanent staff and, as required, other temporary working groups of appropriate departmental staff and outside experts.

[(3) The Committee shall recommend to the Secretaries strategic direction for the joint coordination and sharing efforts between and within the two Departments under this section and shall oversee implementation of those efforts.

[(4) The Committee shall submit to the two Secretaries and to Congress an annual report containing such recommendations as the Committee considers appropriate.

[(5) In order to enable the Committee to make recommendations in its annual report under paragraph (4), the Committee shall do the following:

[(A) Review existing policies, procedures, and practices relating to the coordination and sharing of health care resources between the two Departments.

[(B) Identify changes in policies, procedures, and practices that, in the judgment of the Committee, would promote mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

[(C) Identify and assess further opportunities for the coordination and sharing of health care resources between the Departments that, in the judgment of the Committee, would not adversely affect the range of services, the quality of care,

or the established priorities for care provided by either Department.

[(D) Review the plans of both Departments for the acquisition of additional health care resources, especially new facilities and major equipment and technology, in order to assess the potential effect of such plans on further opportunities for the coordination and sharing of health care resources.

[(E) Review the implementation of activities designed to promote the coordination and sharing of health care resources between the Departments.

[(6) The Committee chairman, under procedures jointly developed by the two Secretaries, may require the Inspector General of either or both Departments to assist in activities under paragraph (5)(E).]

(d) JOINT INCENTIVES PROGRAM.—(1) Pursuant to subsection (b)(4), the two Secretaries shall carry out a program to identify, provide incentives to, implement, fund, and evaluate creative coordination and sharing initiatives at the facility, intraregional, and nationwide levels. The program shall be administered by the [Committee established in subsection (c)] *Department of Veterans Affairs-Department of Defense Joint Executive Committee*, under procedures jointly prescribed by the two Secretaries.

* * * * * * *

(e) GUIDELINES AND POLICIES FOR IMPLEMENTATION OF COORDINATION AND SHARING RECOMMENDATIONS, CONTRACTS, AND AGREEMENTS.—(1) To implement the recommendations made by the [Committee under subsection (c)(2)] *Department of Veterans Affairs-Department of Defense Joint Executive Committee with respect to health care resources*, as well as to carry out other health care contracts and agreements for coordination and sharing initiatives as they consider appropriate, the two Secretaries shall jointly issue guidelines and policy directives. Such guidelines and policies shall provide for coordination and sharing that—

(A) * * *

* * * * * * *

(f) ANNUAL JOINT REPORT.—(1) * * *

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

(A) * * *

[(B) The assessment of further opportunities identified under subparagraph (C) of subsection (c)(5) for the sharing of health-care resources between the two Departments.

[(C) Any recommendation made under subsection (c)(4) during such fiscal year.]

*(B) The assessment of further opportunities identified by the Department of Veterans Affairs-Department of Defense Joint Executive Committee under subsection (d)(3) of section 320 of this title for the sharing of health-care resources between the two Departments.*

*(C) Any recommendation made by that committee under subsection (c)(2) of that section during that fiscal year.*

* * * * * * *

(3) In addition to the matters specified in paragraph (2), the two Secretaries shall include in the annual report under this sub-

section an overall status report of the progress of health resources sharing between the two Departments as a consequence of subtitle C of title VII of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 *(Public Law 107–314)* and of other sharing initiatives taken during the period covered by the report. Such status report shall indicate the status of such sharing and shall include appropriate data as well as analyses of that data. The annual report shall include the following:

(A) * * *

* * * * * * *

(4) In addition to the matters specified in paragraphs (2) and (3), the two Secretaries shall include in the annual report under this subsection for each year through 2008 the following:

(A) A description of the measures taken, or planned to be taken, to implement the health resources sharing project under section 722 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 *(Public Law 107–314)* and any cost savings anticipated, or cost sharing achieved, at facilities participating in the project, including information on improvements in access to care, quality, and timeliness, as well as impediments encountered and legislative recommendations to ameliorate such impediments.

(B) A description of the use of the waiver authority provided by section 722(d)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 *(Public Law 107–314)*, including—

(i) * * *

* * * * * * *

(5) In addition to the matters specified in paragraphs (2), (3), and (4), the two Secretaries shall include in the annual report under this subsection for each year through 2009 a report on the pilot program for graduate medical education under section 725 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 *(Public Law 107–314)*, including activities under the program during the preceding year and each Secretary's assessment of the efficacy of providing education and training under that program.

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## SECTION 8003 OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

**SEC. 8003. PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN.**

(a) * * *

(b) BASIC SUPPORT PAYMENTS AND PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

(1) * * *

(2) BASIC SUPPORT PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

(A) * * *

* * * * * * *

(H) ELIGIBILITY FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES AFFECTED BY PRIVATIZATION OF MILITARY HOUSING.—

[(i) ELIGIBILITY.—For any fiscal year beginning with fiscal year 2003, a heavily impacted local educational agency that received a basic support payment under subparagraph (A) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) or (C), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion.

[(ii) AMOUNT OF PAYMENT.—The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E) (as the case may be), shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year.]

*(i) ELIGIBILITY.—For any fiscal year beginning with fiscal 2003, a heavily impacted local educational agency that received a basic support payment under paragraph (b)(2) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B), (C), (D), or (E), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be for the period during which the housing units are undergoing such conversion.*

*(ii) AMOUNT OF PAYMENT.—The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E), as the case may be, shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year and under the same provisions of subparagraph (D) or (E) under which the agency was paid during the prior fiscal year.*

* * * * * * *

## SECTION 204 OF THE DEFENSE AUTHORIZATION AMENDMENTS AND BASE CLOSURE AND REALIGNMENT ACT

**SEC. 204. IMPLEMENTATION**

(a) * * *

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) * * *

* * * * * * *

(7)(A) * * *

* * * * * * *

(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)⟧ *Amounts in the account shall be available to the Secretary, without appropriation and until expended,* for the purpose of acquiring, constructing, and improving—

(I) commissary stores; and

(II) real property and facilities for nonappropriated fund instrumentalities.

* * * * * * *

⟦(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.

⟦(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 sub-

section as the Secretary considers appropriate to protect the interests of the United States.]

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## DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990

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## TITLE XXIX—DEFENSE BASE CLOSURES AND REALIGNMENTS

PART A—DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

* * * * * * *

**SEC. 2905. IMPLEMENTATION**

(a) * * *

* * * * * * *

[(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.

[(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.]

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**SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990**

(a) * * *

* * * * * * *

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) * * *

* * * * * * *

(3) [The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts)] *Amounts in the account shall be available to the Secretary, without appropriation and until expended,* for the purpose of acquiring, constructing, and improving—

(A) * * *

* * * * * * *

**SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.**

(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—

(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

[(A) 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 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.]

*(A) A force-structure plan for the Armed Forces that—*

*(i) at a minimum, assumes the force structure under the 1991 Base Force force structure (as defined in paragraph (5)) that is also known as the "Cheney-Powell force structure"; and*

*(ii) includes such consideration as the Secretary considers appropriate of an assessment by the Secretary of—*

*(I) the probable threats to the national security during the 20-year period beginning with fiscal year 2005;*

*(II) the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet those threats; and*

*(III) the anticipated levels of funding that will be available for national defense purposes during such period.*

* * * * * * *

(2) RELATIONSHIP OF PLAN AND INVENTORY.—Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan*, based upon an assumption that there are no installations available outside the United States for the permanent basing of elements of the Armed Forces*.

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(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory. *Any such revision shall be consistent with this subsection.* If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress as part of the budget justification documents submitted to Congress for fiscal year 2006.

*(5) BASE FORCE.—In this subsection, the term "1991 Base Force force structure" means the force structure plan for the Armed Forces, known as the "Base Force", that was adopted by the Secretary of Defense in November 1990 based upon recommendations of the Chairman of the Joint Chiefs of Staff and as incorporated in the President's budget for fiscal year 1992, as submitted to Congress in February 1991 and that assumed the following force structure:*

*(A) For the Department of Defense, 1,600,000 members of the Armed Forces on active duty and 900,000 members in an active status in the reserve components.*

*(B) For the Army, 12 active divisions, six National Guard divisions, and two cadre divisions or their equivalents.*

*(C) For the Navy, 12 aircraft carrier battle groups or their equivalents and 451 naval vessels, including 85 attack submarines.*

*(D) For the Marine Corps, three active and one Reserve divisions and three active and one Reserve air wings.*

*(E) For the Air Force, 15 active fighter wings and 11 National Guard fighter wings or their equivalents.*

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**SEC. 2913. SELECTION CRITERIA FOR 2005 ROUND.**

(a) PREPARATION OF PROPOSED SELECTION CRITERIA.—

(1) * * *

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*(3) USE OF FORCE-STRUCTURE PLAN.—In preparing the proposed and final criteria to be used by the Secretary in making recommendations under section 2914 for the closure or realignment of military installations inside the United States, the Sec-*

*retary shall use the force-structure plan for the Armed Forces prepared under section 2912(a).*

* * * * * * *

*(g) BASE EXCLUSION CRITERIA.—In preparing the selection criteria required by this section that will be used in making recommendations for the closure or realignment of military installations inside the United States, the Secretary shall ensure that the final criteria reflect the requirement to develop a list of those military installations to be excluded from the base closure and realignment process, as provided in subsection (h).*

*(h) LIST OF INSTALLATIONS EXCLUDED FROM CONSIDERATION FOR CLOSURE OR REALIGNMENT.—(1) Before preparing the list required by section 2914(a) of the military installations inside the United States that the Secretary recommends for closure or realignment, the Secretary shall prepare a list of core military installations that the Secretary considers absolutely essential to the national defense and that should not be considered for closure.*

*(2) Not later than April 1, 2005, the Secretary shall submit to the congressional defense committees, publish in the Federal Register, and send to the Commission the list required by paragraph (1). The list shall contain at least 50 percent of the total number of military installations located inside the United States as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.*

*(3) The Commission shall consider the list based on the final criteria developed under subsection (e). The Commission may modify this list, in the manner provided in section 2903(d) and section 2914(d), if the Commission finds that the inclusion of a military installation on the list substantially violates the criteria. The Commission shall forward to the President, not later than April 30, 2005, a report containing its recommendations regarding the list, which must comply with the percentages specified in paragraph (2). The Comptroller General shall also comply with section 2903(d)(5) by that date.*

*(4) If the Commission submits a report to the President under paragraph (3), the President shall notify Congress, not later than May 10, 2005, regarding whether the President approves or disapproves the report. If the President disapproves the report, the Commission shall be dissolved, and the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.*

*(5) A military installation included on the exclusion list approved under this subsection may not be included on the closure and realignment list prepared under section 2914(a) or otherwise considered for closure or realignment as part of the base closure process in 2005.*

**SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.**

(a) * * *

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(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

(1) * * *

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(3) LIMITATIONS ON AUTHORITY [TO ADD] *TO CONSIDER ADDITIONS* TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

(A) * * *

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(5) SITE VISIT *AND UNANIMOUS VOTE*.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not recommend the closure of a military installation not recommended for closure by the Secretary under subsection (a) unless at least two members of the Commission visit the installation before the date of the transmittal of the report *and the decision of the Commission to recommend the closure of the installation is unanimous*.

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

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## TITLE III—OPERATION AND MAINTENANCE

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### Subtitle C—Environmental Provisions

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**SEC. 324. 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.]

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## TITLE VII—HEALTH CARE PROVISIONS

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### Subtitle C—Other Matters

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**SEC. 722. MILITARY HEALTH CARE FOR PERSONS RELIANT ON HEALTH CARE FACILITIES AT BASES BEING CLOSED OR REALIGNED.**

[(a) ESTABLISHMENT.—The Secretary of Defense shall establish a joint services working group on the provision of military health care to persons who rely for health care on health care facilities at military installations being closed or realigned.

[(b) MEMBERSHIP.—The members of the working group shall include the Assistant Secretary of Defense for Health Affairs, the Surgeon General of the Army, the Surgeon General of the Navy, the Surgeon General of the Air Force, or a designee of each such person, and one independent member appointed by the Secretary of Defense from among private citizens whose interest in matters within the responsibility of the working group qualify that person to represent all personnel entitled to health care under chapter 55 of title 10, United States Code.

[(c) DUTIES.—(1) In the case of each closure or realignment of a military installation that will adversely affect the accessibility of health care in a facility of the uniformed services for persons entitled to such health care under chapter 55 of title 10, United States Code, the working group shall solicit the views of such persons regarding suitable substitutes for the furnishing of health care to those persons under that chapter.

[(2) In carrying out paragraph (1), the working group—

[(A) shall conduct meetings with persons referred to in that paragraph, or representatives of such persons;

[(B) may use reliable sampling techniques;

[(C) shall visit the areas where closures or realignments of military installations will adversely affect the accessibility of health care in a facility of the uniformed services for persons referred to in paragraph (1) and shall conduct public meetings; and

[(D) shall ensure that members of the uniformed services on active duty, members and former members of the uniformed services entitled to retired or retainer pay, and dependents and survivors of such members and retired personnel are afforded the opportunity to express views.

[(d) RECOMMENDATIONS.—With respect to each closure and realignment of a military installation referred to in subsection (c), the working group shall submit to the Congress and the Secretary of Defense the working group's recommendations regarding the alternative means for continuing to provide accessible health care under chapter 55 of title 10, United States Code, to persons referred to in that subsection.]

*(a) ESTABLISHMENT.—Not later than December 31, 2003, the Secretary of Defense shall establish a working group on the provision of military health care to persons who rely for health care on health care facilities located at military installations—*

*(1) inside the United States that are selected for closure or realignment in the 2005 round of realignments and closures authorized by sections 2912, 2913, and 2914 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 title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 155 Stat. 1342); or*

*(2) outside the United States that are selected for closure or realignment as a result of force posture changes.*

*(b) MEMBERSHIP.—The members of the working group shall include, at a minimum, the following:*

*(1) The Assistant Secretary of Defense of Health Affairs, or the designee of the Assistant Secretary.*

*(2) The Surgeon General of the Army, or the designee of that Surgeon General.*

*(3) The Surgeon General of the Navy, or the designee of that Surgeon General.*

*(4) The Surgeon General of the Air Force, or the designee of that Surgeon General.*

*(5) At least one independent member from each TRICARE region, but not to exceed a total of 12 members appointed under this paragraph, whose experience in matters within the responsibility of the working group qualify that person to represent persons authorized health care under chapter 55 of title 10, United States Code.*

*(c) DUTIES.—(1) In developing the selection criteria and recommendations for the 2005 round of realignments and closures required by sections 2913 and 2914 of the Defense Base Closure and Realignment Act of 1990, the Secretary of Defense shall consult with the working group.*

*(2) The working group shall be available to provide assistance to the Defense Base Closure and Realignment Commission.*

*(3) In the case of each military installation referred to in paragraph (1) or (2) of subsection (a) whose closure or realignment will affect the accessibility to health care services for persons entitled to such services under chapter 55 of title 10, United States Code, the working group shall provide to the Secretary of Defense a plan for the provision of the health care services to such persons.*

*(d) SPECIAL CONSIDERATIONS.—In carrying out its duties under subsection (c), the working group—*

*(1) shall conduct meetings with persons entitled to health care services under chapter 55 of title 10, United States Code, or representatives of such persons;*

*(2) may use reliable sampling techniques;*

*(3) may visit the areas where closures or realignments of military installations will adversely affect the accessibility of health care for such persons and may conduct public meetings; and*

*(4) shall ensure that members of the uniformed services on active duty, members and former members of the uniformed services entitled to retired or retainer pay, and dependents and survivors of such members and retired personnel are afforded the opportunity to express their views.*

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## TITLE X—GENERAL PROVISIONS

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### Subtitle H—Other Matters

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**SEC. 1082. LIMITATION ON SUPPORT FOR UNITED STATES CONTRACTORS SELLING ARMS OVERSEAS.**

(a) * * *

(b) DEPARTMENT OF DEFENSE EXHIBITIONS.—(1) A military department may not participate directly in any airshow or trade exhibition held outside the United States unless [the Secretary of Defense—

[(A) determines that it is in the national security interests of the United States for the military department to do so; and

[(B) provides to the congressional defense committees at least 45 days before the opening of the airshow or trade exhibition a report detailing—

[(i) why the show or exhibition is in the national security interest;

[(ii) a description of the implications that promoting the sale of the weapons in question will have on arms control; and

[(iii) an estimate of any costs to be incurred.] *the Secretary of Defense determines that it is in the national security interests of the United States for the military departments to do so.*

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## DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

## TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

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### [Subtitle E—Defense Nuclear Workers

**[SEC. 3161. DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES WORKFORCE RESTRUCTURING PLAN.**

[(a) IN GENERAL.—Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy (hereinafter in this subtitle referred to as the "Secretary") shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

[(1) the reconfiguration of the defense nuclear facility; and

[(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

[(b) CONSULTATION.—(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

[(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

[(c) OBJECTIVES.—In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

[(1) Changes in the workforce at a Department of Energy defense nuclear facility—

[(A) should be accomplished so as to minimize social and economic impacts;

[(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

[(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

[(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1682)).

[(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

[(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

[(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

[(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

[(A) programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;

[(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101–510; 10 U.S.C. 2391 note); and

[(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).

[(d) IMPLEMENTATION.—The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).

[(e) PLAN UPDATES.—Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—

[(1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;

[(2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

[(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

[(f) SUBMITTAL TO CONGRESS.—(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.

[(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

**[SEC. 3162. PROGRAM TO MONITOR DEPARTMENT OF ENERGY WORKERS EXPOSED TO HAZARDOUS AND RADIOACTIVE SUBSTANCES.**

[(a) IN GENERAL.—The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.

[(b) IMPLEMENTATION OF PROGRAM.—(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—

[(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

[(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

[(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

[(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

[(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

[(F) ensure that employee participation in the program is voluntary.

[(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

[(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

[(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

[(A) The American College of Occupational and Environmental Medicine.

[(B) The National Academy of Sciences.

[(C) The National Council on Radiation Protection.

[(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

[(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.

[(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

[(6) The Secretary shall commence carrying out the program described in this subsection not later than 1 year after the date of the enactment of this Act.

[(c) AGREEMENT WITH SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

**[SEC. 3163. DEFINITIONS.**

[For purposes of this subtitle:

[(1) The term "Department of Energy defense nuclear facility" means—

[(A) a production facility or utilization facility (as those terms are defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)) that is under the control or jurisdiction of the Secretary and that is operated for na-

tional security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

[(B) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

[(C) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);

[(D) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including the Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

[(E) any facility described in subparagragraphs (A) through (D) that—

[(i) is no longer in operation;

[(ii) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

[(iii) was operated for national security purposes.

[(2) The term "Department of Energy employee" means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.]

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994**

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# TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

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## Subtitle E—Other Matters

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**SEC. 845. AUTHORITY OF THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.**

(a) * * *

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(g) PERIOD OF AUTHORITY.—The authority to carry out projects under subsection (a) shall terminate at the end of [September 30, 2004] *September 30, 2008*.

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# DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

# TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

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## Subtitle C—Program Authorizations, Restrictions, and Limitations

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**SEC. 3136. PROHIBITION ON [RESEARCH AND DEVELOPMENT] *DEVELOPMENT AND PRODUCTION* OF LOW-YIELD NUCLEAR WEAPONS.**

(a) UNITED STATES POLICY.—It shall be the policy of the United States not to [conduct research and development which could lead to the production by the United States of] *develop or produce* a new low-yield nuclear weapon, including a precision low-yield warhead.

(b) LIMITATION.—The Secretary of Energy may not [conduct, or provide for the conduct of, research and development which could lead to the production by the United States of] *develop, produce, or provide for the development or production of,* a low-yield nuclear weapon which, as of [the date of the enactment of this Act] *November 30, 1993,*, has not entered production.

(c) EFFECT ON OTHER [RESEARCH AND] DEVELOPMENT.—Nothing in this section shall prohibit the Secretary of Energy from conducting, or providing for the conduct of, [research and] development necessary—

(1) * * *

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(3) to address proliferation concerns*, including assessment of low-yield nuclear weapons development by other nations that may pose a national security risk to the United States*.

*(d) EFFECT ON STUDIES AND DESIGN WORK.—Nothing in this section shall prohibit the Secretary of Energy from conducting, or providing for the conduct of, concept definition studies, feasibility studies, or detailed engineering design work.*

[(d)] *(e)* DEFINITION.—In this section, the term "low-yield nuclear weapon" means a nuclear weapon that has a yield of less than five kilotons.

**[SEC. 3137. TESTING OF NUCLEAR WEAPONS.**

[(a) IN GENERAL.—Of the funds authorized to be appropriated under section 3101(a)(2) for the Department of Energy for fiscal year 1994 for weapons testing, $211,326,000 shall be available for infrastructure maintenance at the Nevada Test Site, and for maintaining the technical capability to resume underground nuclear testing at the Nevada Test Site.

[(b) ATMOSPHERIC TESTING OF NUCLEAR WEAPONS.—None of the funds appropriated pursuant to this Act or any other Act for any fiscal year may be available to maintain the capability of the United States to conduct atmospheric testing of a nuclear weapon.

**[SEC. 3138. STOCKPILE STEWARDSHIP PROGRAM.**

[(a) ESTABLISHMENT.—The Secretary of Energy shall establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification.

[(b) PROGRAM ELEMENTS.—The program shall include the following:

[(1) An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the detonation of nuclear weapons.

[(2) An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.

[(3) Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the National Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.

[(c) AUTHORIZATION OF APPROPRIATIONS.—Of funds authorized to be appropriated to the Secretary of Energy for fiscal year 1994 for weapons activities, $157,400,000 shall be available for the stewardship program established under subsection (a).]

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# Subtitle D—Other Matters

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**[SEC. 3153. 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; and

[(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; and

[(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment.

[(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.]

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## NATIONAL SECURITY ACT OF 1947

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*Sec. 105C. Protection of operational files of National Geospatial-Intelligence Agency.*

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[Sec. 110. National mission of National Imagery and Mapping Agency.]
*Sec. 110. National mission of National Geospatial-Intelligence Agency.*

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DEFINITIONS

SEC. 3. As used in this Act:

(1) * * *

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(4) The term "intelligence community" includes—

(A) * * *

* * * * * * *

(E) the [National Imagery and Mapping Agency] *National Geospatial- Intelligence Agency*;

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## TITLE I—COORDINATION FOR NATIONAL SECURITY

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RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM

SEC. 105. (a) * * *

(b) RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 103 and 104 of this Act, the Secretary of Defense shall ensure—

(1) * * *

(2) through the [National Imagery and Mapping Agency] *National Geospatial-Intelligence 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) * * *

* * * * * * *

(d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) * * *

* * * * * * *

(3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency* in meeting their respective national missions.

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ASSISTANCE TO UNITED STATES LAW ENFORCEMENT AGENCIES

SEC. 105A. (a) * * *

(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) * * *

* * * * * * *

(C) The [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

* * * * * * *

PROTECTION OF OPERATIONAL FILES OF THE [NATIONAL IMAGERY AND MAPPING AGENCY] *NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY*

SEC. 105C. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*, with the coordination of the Director of Central Intelligence, may exempt operational files of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence 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] *National Geospatial-Intelligence Agency* (hereafter in this section referred to as "[NIMA] *NGA*") concerning the activities of [NIMA] *NGA* that before the establishment of [NIMA] *NGA* 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.

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(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) * * *

* * * * * * *

(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) * * *

* * * * * * *

(iv) The Office of General Counsel of [NIMA] *NGA*.

(v) The Office of the Director of [NIMA] *NGA*.

* * * * * * *

(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] *NGA* 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] *NGA*, such information shall be examined ex parte, in camera by the court.

* * * * * * *

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, [NIMA] *NGA* 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] *NGA* 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.

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(vi) If the court finds under this paragraph that [NIMA] *NGA* has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order [NIMA] *NGA* 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] *NGA* agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

* * * * * * *

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence 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.

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(3) A complainant that alleges that [NIMA] *NGA* 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] *NGA* 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] *NGA*, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

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APPOINTMENT OF OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES

SEC. 106. (a) CONCURRENCE OF DCI IN CERTAIN APPOINTMENTS.—(1) * * *

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

(A) * * *

* * * * * * *

(C) The Director of the [National Imagery and Mapping Agency] *National Geospatial-Intelligence Agency*.

* * * * * * *

NATIONAL MISSION OF [NATIONAL IMAGERY AND MAPPING AGENCY] *NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY*

SEC. 110. (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] *National Geospatial-Intelligence Agency* shall support the [imagery] *geospatial intelligence* 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] *National Geospatial-Intelligence 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] *National Geospatial-Intelligence 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.

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## SECTION 4004 OF THE DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION ACT OF 1990

**SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE**

(a) * * *

(b) CHAIRMAN.—[Until October 1, 1997, the] *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.]

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## SECTION 1405 OF THE DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1986

**[SEC. 1405. TWO-YEAR BUDGET CYCLE FOR THE DEPARTMENT OF DEFENSE.**

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

[(b) REQUIREMENT FOR TWO-YEAR BUDGET PROPOSAL.—The President shall include in the budget submitted to the Congress pursuant to section 1105 of title 31, United States Code, for fiscal year 1988 a single proposed budget for the Department of Defense and related agencies for fiscal years 1988 and 1989. Thereafter, the President shall submit a proposed two-year budget for the Department of Defense and related agencies every other year.

[(c) REPORT.—Not later than April 1, 1986, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report containing the Secretary's views on the following:

[(1) The advantages and disadvantages of operating the Department of Defense and related agencies on a two-year budget cycle.

[(2) The Secretary's plans for converting to a two-year budget cycle.

[(3) A description of any impediments (statutory or otherwise) to converting the operations of the Department of Defense and related agencies to a two-year budget cycle beginning with fiscal year 1988.]

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## SECTION 656 OF THE FOREIGN ASSISTANCE ACT OF 1961

**[SEC. 656. ANNUAL FOREIGN MILITARY TRAINING REPORT.**

[(a) ANNUAL REPORT.—

[(1) IN GENERAL.—Not later than January 31 of each year, the Secretary of Defense and the Secretary of State shall jointly prepare and submit to the appropriate congressional committees a report on all military training provided to foreign military personnel by the Department of Defense and the De-

partment of State during the previous fiscal year and all such training proposed for the current fiscal year.

[(2) EXCEPTION FOR CERTAIN COUNTRIES.—Paragraph (1) does not apply to any NATO member, Australia, Japan, or New Zealand, unless one of the appropriate congressional committees has specifically requested, in writing, inclusion of such country in the report. Such request shall be made not later than 90 calendar days prior to the date on which the report is required to be transmitted.

[(b) CONTENTS.—The report described in subsection (a) shall include the following:

[(1) For each military training activity, the foreign policy justification and purpose for the activity, the number of foreign military personnel provided training and their units of operation, and the location of the training.

[(2) For each country, the aggregate number of students trained and the aggregate cost of the military training activities.

[(3) With respect to United States personnel, the operational benefits to United States forces derived from each military training activity and the United States military units involved in each activity.

[(c) FORM.—The report described in subsection (a) shall be in unclassified form but may include a classified annex.

[(d) AVAILABILITY ON INTERNET.—All unclassified portions of the report described in subsection (a) shall be made available to the public on the Internet through the Department of State.

[(e) DEFINITION.—In this section, the term 'appropriate congressional committees' means—

[(1) the Committee on Appropriations and the Committee on International Relations of the House of Representatives; and

[(2) the Committee on Appropriations and the Committee on Foreign Relations of the Senate.]

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991

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## TITLE XXIX—DEFENSE BASE CLOSURES AND REALIGNMENTS

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# Part B—Other Provisions Relating to Defense Base Closures and Realignments

**SEC. 2921. CLOSURE OF FOREIGN MILITARY INSTALLATIONS**

(a) * * *

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(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 im-

provements made by the United States to facilities at an installation located in the host country until [30] *14* 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.

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(g) CONGRESSIONAL OVERSIGHT OF PAYMENTS-IN-KIND.—(1) Not less than [30] *14* 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) * * *

* * * * * * *

(2) Not less than [30] *14* 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) * * *

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**SEC. 2926. CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES**

(a) * * *

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[(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 annual report to Congress required by section 2706 of title 10, United States Code.]

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993

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## TITLE VII—HEALTH CARE PROVISIONS

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PART C—MISCELLANEOUS

**SEC. 734. REGISTRY OF MEMBERS OF THE ARMED FORCES EXPOSED TO FUMES OF BURNING OIL IN CONNECTION WITH OPERATION DESERT STORM.**

(a) * * *

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[(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.]

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## TITLE XXVIII—GENERAL PROVISIONS

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PART A—MILITARY CONSTRUCTION PROGRAM AND MILITARY FAMILY HOUSING CHANGES

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PART E—MISCELLANEOUS

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**SEC. 2868. REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS.**

(a) REQUIREMENT.—[The Secretary of Defense shall submit to Congress with the budget submitted under section 1105 of title 31, United States Code, for the fiscal year in which the first construction of a facility for the permanent basing of a new weapon system is to be authorized] *Not later than 30 days after the date on which a decision is made selecting the site or sites for the permanent basing of a new weapon system, the Secretary of Defense shall submit to Congress* a report describing—

(1) * * *

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995

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## TITLE VII—HEALTH CARE PROVISIONS

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## Subtitle C—Persian Gulf Illness

**SEC. 721. PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.**

(a) * * *

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[(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.]

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# TITLE XIII—MATTERS RELATING TO ALLIES AND OTHER NATIONS

## Subtitle A—Matters Relating to NATO

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**SEC. 1306. GEORGE C. MARSHALL EUROPEAN CENTER FOR SECURITY STUDIES.**

(a) * * *

(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] *from states located in Europe or the territory of the former Soviet Union* if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997

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# TITLE III—OPERATION AND MAINTENANCE

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## Subtitle C—Environmental Provisions

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**SEC. 324. SHIPBOARD SOLID WASTE CONTROL.**

(a) * * *

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[(c) REPORT ON COMPLIANCE WITH ANNEX V TO THE CONVENTION.—The Secretary of Defense shall include in each report on environmental compliance activities submitted to Congress under section 2706(b) of title 10, United States Code, the following information:

[(1) A list of the ship types, if any, for which the Secretary of the Navy has made the determination referred to in paragraph (2)(C) of section 3(c) of the Act to Prevent Pollution from Ships, as amended by subsection (a)(2) of this section.

[(2) A list of ship types which the Secretary of the Navy has determined can comply with Regulation 5 of Annex V to the Convention.

[(3) A summary of the progress made by the Navy in implementing the requirements of paragraphs (2) and (3) of such section 3(c), as so amended.

[(4) A description of any emerging technologies offering the potential to achieve full compliance with Regulation 5 of Annex V to the Convention.

[(5) The amount and nature of the discharges in special areas, not otherwise authorized under the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), during the preceding year from ships referred to in section 3(b)(1)(A) of such Act owned or operated by the Department of the Navy.]

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# TITLE X—GENERAL PROVISIONS

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## Subtitle F—Other Matters

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**SEC. 1065. GEORGE C. MARSHALL EUROPEAN CENTER FOR STRATEGIC SECURITY STUDIES.**

(a) * * *

(b) MARSHALL CENTER PARTICIPATION BY FOREIGN NATIONS.—[(1)] Notwithstanding any other provision of law, the Secretary of Defense may authorize participation by a European or Eurasian nation in Marshall Center programs if the Secretary determines,

after consultation with the Secretary of State, that such participation is in the national interest of the United States.

[(2) Not later than January 31 of each year, the Secretary of Defense shall submit to Congress a report setting forth the names of the foreign nations permitted to participate in programs of the Marshall Center during the preceding year under paragraph (1). Each such report shall be prepared by the Secretary with the assistance of the Director of the Marshall Center.]

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**SEC. 1084. DEFENSE BURDENSHARING.**

(a) * * *

(e) REPORT DATE.—Section 1003(c) of Public Law [98–515] *98–525* is amended by striking out "each year" and inserting "by March 1, 1998, and every other year thereafter".

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## SECTION 8009 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1997

SEC. 8009. None of the funds provided in this Act shall be available to initiate (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000, or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year[, unless the congressional defense committees have been notified at least thirty days in advance of the proposed contract award]: *Provided,* That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further,* That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further,* That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further,* That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: *Provided further,* That notwithstanding Section 8010 of Public Law 104–61, funds appropriated for the DDG–15 destroyer program in Public Law 104–61 may be used to initiate a multiyear contract for the Raleigh Burke class destroyer program.

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

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# TITLE III—OPERATION AND MAINTENANCE

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## Subtitle C—Environmental Provisions

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**SEC. 349. PARTNERSHIPS FOR INVESTMENT IN INNOVATIVE ENVIRONMENTAL TECHNOLOGIES.**

(a) * * *

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[(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.]

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**STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999**

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# TITLE VII—HEALTH CARE PROVISIONS

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## Subtitle E—Other Matters

**SEC. 745. JOINT DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REPORTS RELATING TO INTERDEPARTMENTAL COOPERATION IN THE DELIVERY OF MEDICAL CARE.**

(a) * * *

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(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 De-

partment 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.]

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# TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

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## Subtitle A—Amendments to General Contracting Authorities, Procedures, and Limitations

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**[SEC. 807. PARA-ARAMID FIBERS AND YARNS.**

[(a) AUTHORITY.—The Secretary of Defense may procure articles containing para-aramid fibers and yarns manufactured in a foreign country referred to in subsection (d) if the Secretary determines that—

[(1) procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts for the supply of such para-aramid fibers and yarns; and

[(2) such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

[(b) SUBMISSION TO CONGRESS.—Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

[(c) APPLICABILITY TO SUBCONTRACTS.—The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

[(d) FOREIGN COUNTRIES COVERED.—The authority under subsection (a) applies with respect to a foreign country that—

[(1) is a party to a defense memorandum of understanding entered into under section 2531 of this title; and

[(2) permits United States firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country, as determined by the Secretary of Defense.

[(e) DEFINITION.—In this section, the term "national technology and industrial base" has the meaning given that term in section 2500 of title 10, United States Code.]

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## Subtitle B—Other Matters

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**SEC. 819. FIVE-YEAR AUTHORITY FOR SECRETARY OF THE NAVY TO EXCHANGE CERTAIN ITEMS.**

(a) BARTER AUTHORITY.—The Secretary of the Navy may enter into a barter agreement to convey trucks and other tactical vehicles in exchange for the repair and remanufacture of ribbon bridges for the Marine Corps. The Secretary shall enter into any such agreement in accordance with [section 201(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(c)),] *section 503 of title 40, United States Code,* and the regulations issued under such section, except that the requirement that the items to be exchanged be similar shall not apply to the authority provided under this subsection.

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# TITLE XII—MATTERS RELATING TO OTHER NATIONS

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## Subtitle C—Matters Relating to NATO and Europe

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**[SEC. 1223. 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 National Security 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.]

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000**

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# TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

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## Subtitle B—Program Requirements, Restrictions, and Limitations

**SEC. 212. SENSE OF CONGRESS REGARDING DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.**

(a) * * *

* * * * * * *

[(c) CERTIFICATION.—If the proposed budget for a fiscal year covered by subsection (b) fails to comply with the objective set forth in that subsection—

[(1) the Secretary of Defense shall submit to Congress—

[(A) the certification of the Secretary that the budget does not jeopardize the stability of the defense technology base or increase the risk of failure to maintain technological superiority in future weapon systems; or

[(B) a statement of the Secretary explaining why the Secretary is unable to submit such certification; and

[(2) the Defense Science Board shall, not more than 60 days after the date on which the Secretary submits the certification or statement under paragraph (1), submit to the Secretary and Congress a report assessing the effect such failure to comply is likely to have on defense technology and the national defense.]

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# TITLE VII—HEALTH CARE PROVISIONS

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## Subtitle C—Other Matters

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**SEC. 724. JOINT TELEMEDICINE AND TELEPHARMACY DEMONSTRATION PROJECTS BY THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS.**

(a) * * *

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[(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.]

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# TITLE X—GENERAL PROVISIONS

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## Subtitle D—Miscellaneous Report Requirements and Repeals

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**SEC. 1039. REPORT ON NATO DEFENSE CAPABILITIES INITIATIVE.**

(a) * * *

[(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.]

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# TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

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**SEC. 1305. 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 ex-

pended for planning, design, or construction of a chemical weapons destruction facility in Russia until the Secretary of Defense submits to Congress a certification that there has been—

(1) * * *

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(6) a demonstrated commitment from the international community to fund and build infrastructure needed to support and operate the facility.[.]

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# DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

# TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

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## Subtitle C—Program Authorizations, Restrictions, and Limitations

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**[SEC. 3132. CONTINUATION OF PROCESSING, TREATMENT, AND DISPOSITION OF LEGACY NUCLEAR MATERIALS.**

[The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide the technical staff necessary to operate and so maintain such facilities.

**[SEC. 3133. 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.

[(g) TERMINATION OF ANNUAL UPDATES.—Effective December 31, 2004, the requirements of subsections (c), (d), (e), and (f) shall terminate.

**[SEC. 3134. PROCEDURES FOR MEETING TRITIUM PRODUCTION REQUIREMENTS.**

[(a) PRODUCTION OF NEW TRITIUM.—The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear

Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

[(b) SUPPORT.—To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.

[(c) DESIGN AND ENGINEERING DEVELOPMENT.—The Secretary shall—

[(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

[(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.]

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**[SEC. 3136. NONPROLIFERATION INITIATIVES AND ACTIVITIES.**

[(a) INITIATIVE FOR PROLIFERATION PREVENTION PROGRAM.—(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.

[(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—

[(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or

[(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.

[(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—

[(i) is currently involved in activities described in subparagraph (A)(i); or

[(ii) was not formerly involved in activities described in subparagraph (A)(ii).

[(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.

[(B) For purposes of this paragraph, the term "country of proliferation concern" means any country so designated by the Direc-

tor of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program.

[(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:

[(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes.

[(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.

[(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.

[(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.

[(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.

[(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.

[(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall—

[(A) after such payment, submit a report to the congressional defense committees explaining the particular circumstances making such payment under the Initiatives for Proliferation Prevention program with such funds unavoidable; and

[(B) ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program to offset the amount of such payment.

[(b) NUCLEAR CITIES INITIATIVE.—(1) No amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.

[(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.

[(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding

whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.

[(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.

[(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of the United States Government that participates in or contributes to the initiative. The report shall describe separately any interagency participation in or contribution to the initiative.

[(c) REPORT.—(1) 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 on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.

[(2) The report shall include the following:

[(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the case may be, and means for measuring the achievement of such objectives.

[(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.

[(C) A list of the institutes and scientists associated with weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—

[(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and

[(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative.

[(d) NUCLEAR CITIES INITIATIVE DEFINED.—For purposes of this section, the term "Nuclear Cities Initiative" means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.]

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# Subtitle D—Matters Relating to Safeguards, Security, and Counterintelligence

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**[SEC. 3143. BACKGROUND INVESTIGATIONS OF CERTAIN PERSONNEL AT DEPARTMENT OF ENERGY FACILITIES.**

[(a) IN GENERAL.—The Secretary of Energy shall ensure that an investigation meeting the requirements of section 145 of the Atomic Energy Act of 1954 (42 U.S.C. 2165) is made for each Department of Energy employee, or contractor employee, at a national laboratory or nuclear weapons production facility who—

[(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or

[(2) has or may have regular access to a location where Restricted Data is present.

[(b) COMPLIANCE.—The Secretary shall have 15 months from the date of the enactment of this Act to meet the requirement in subsection (a).]

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**[SEC. 3145. PROTECTION OF CLASSIFIED INFORMATION DURING LABORATORY-TO-LABORATORY EXCHANGES.**

[(a) PROVISION OF TRAINING.—The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.

[(b) COUNTERING OF ESPIONAGE AND INTELLIGENCE-GATHERING ABROAD.—(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Department contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

[(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

**[SEC. 3146. RESTRICTIONS ON ACCESS TO NATIONAL LABORATORIES BY FOREIGN VISITORS FROM SENSITIVE COUNTRIES.**

[(a) BACKGROUND REVIEW REQUIRED.—The Secretary of Energy may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.

[(b) MORATORIUM PENDING CERTIFICATION.—(1) During the period described in paragraph (2), the Secretary may not admit to

any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.

[(2) The period referred to in paragraph (1) is the period beginning 30 days after the date of the enactment of this Act and ending on the later of the following:

[(A) The date that is 90 days after the date of the enactment of this Act.

[(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

[(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, of each of the following:

[(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.

[(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

[(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.

[(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

[(c) WAIVER OF MORATORIUM.—(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of individuals whose admission to a national laboratory is determined by the Secretary to be in the interest of the national security of the United States.

[(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to 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.

[(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:

[(A) A detailed justification for the waiver.

[(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.

[(C) The Secretary's certification that the admission of that individual or delegation to a national laboratory is in the interest of the national security of the United States.

[(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

[(d) EXCEPTION TO MORATORIUM FOR CERTAIN INDIVIDUALS.—The moratorium under subsection (b) shall not apply to any person who—

[(1) is, on the date of the enactment of this Act, an employee or assignee of the Department of Energy, or of a contractor of the Department; and

[(2) has undergone a background review in accordance with subsection (a).

[(e) EXCEPTION TO MORATORIUM FOR CERTAIN PROGRAMS.—The moratorium under subsection (b) shall not apply—

[(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or

[(2) to the materials protection control and accounting program of the Department.

[(f) SENSE OF CONGRESS REGARDING BACKGROUND REVIEWS.—It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

[(g) DEFINITIONS.—For purposes of this section:

[(1) The term "background review", commonly known as an indices check, means a review of information provided by the Director of Central Intelligence and the Director of the Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

[(2) The term "sensitive countries list" means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.]

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**[SEC. 3149. SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA.**

[(a) SUPPLEMENT TO PLAN.—The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 3161 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2260; 50 U.S.C. 435 note).

[(b) CONTENTS OF SUPPLEMENT.—The supplement shall provide for the application of that plan (including in particular the ele-

ment of the plan required by section 3161(b)(1) of that Act) to all records subject to Executive Order No. 12958 that were determined before the date of the enactment of that Act to be suitable for declassification.

[(c) LIMITATION ON DECLASSIFICATION OF RECORDS.—All records referred to in subsection (b) shall be treated, for purposes of section 3161(c) of that Act, in the same manner as records referred to in section 3161(a) of that Act.

[(d) SUBMISSION OF SUPPLEMENT.—The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in section 3161(d) of that Act.]

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## Subtitle D—Matters Relating to Safeguards, Security, and Counterintelligence

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**[SEC. 3150. NOTICE TO CONGRESSIONAL COMMITTEES OF CERTAIN SECURITY AND COUNTERINTELLIGENCE FAILURES WITHIN NUCLEAR ENERGY DEFENSE PROGRAMS.**

[(a) REQUIRED NOTIFICATION.—The Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each significant nuclear defense intelligence loss. Any such notification shall be provided only after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.

[(b) SIGNIFICANT NUCLEAR DEFENSE INTELLIGENCE LOSSES.—In this section, the term "significant nuclear defense intelligence loss" means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.

[(c) MANNER OF NOTIFICATION.—Notification of a significant nuclear defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.

[(d) PROCEDURES.—The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

[(e) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of

classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

[(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413) for the President to ensure that the congressional intelligence committees are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.]

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**[SEC. 3152. REPORT ON COUNTERINTELLIGENCE AND SECURITY PRACTICES AT NATIONAL LABORATORIES.**

[(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).

[(b) CONTENT OF REPORT.—The report shall include, with respect to each national laboratory, the following:

[(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.

[(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.

[(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.

[(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).

[(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.

**[SEC. 3153. REPORT ON SECURITY VULNERABILITIES OF NATIONAL LABORATORY COMPUTERS.**

[(a) REPORT REQUIRED.—Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.

[(b) PREPARATION OF REPORT.—In preparing the report, the National Counterintelligence Policy Board shall establish a so-called "red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.

[(c) SUBMISSION OF REPORT TO SECRETARY OF ENERGY AND TO FBI DIRECTOR.—Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.

[(d) FORWARDING TO CONGRESSIONAL COMMITTEES.—Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:

[(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

[(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

[(e) FIRST REPORT.—The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.

**[SEC. 3154. 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.]

* * * * * * *

**[SEC. 3164. WHISTLEBLOWER PROTECTION PROGRAM.**

[(a) PROGRAM REQUIRED.—The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

[(b) COVERED INDIVIDUALS.—For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

[(c) PROTECTED DISCLOSURES.—For purposes of this section, a protected disclosure is a disclosure—

[(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;

[(2) made to a person or entity specified in subsection (d); and

[(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:

[(A) A violation of law or Federal regulation.

[(B) Gross mismanagement, a gross waste of funds, or abuse of authority.

[(C) A false statement to Congress on an issue of material fact.

[(d) PERSONS AND ENTITIES TO WHICH DISCLOSURES MAY BE MADE.—A person or entity specified in this subsection is any of the following:

[(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.

[(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.

[(3) The Inspector General of the Department of Energy.

[(4) The Federal Bureau of Investigation.

[(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

[(e) OFFICIAL CAPACITY OF PERSONS TO WHOM INFORMATION IS DISCLOSED.—A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.

[(f) ASSISTANCE AND GUIDANCE.—The Secretary, acting through the Inspector General of the Department of Energy, shall provide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

[(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.

[(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.

[(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.

[(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

[(g) REGULATIONS.—The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

[(h) NOTIFICATION TO COVERED INDIVIDUALS.—The Secretary shall notify each covered individual of the following:

[(1) The rights of that individual under this section.

[(2) The assistance and guidance provided under this section.

[(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

[(i) COMPLAINT BY COVERED INDIVIDUALS.—If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

[(j) INVESTIGATION BY OFFICE OF HEARINGS AND APPEALS.—(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—

[(A) determine whether or not the complaint is frivolous; and

[(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.

[(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—

[(A) the individual who submitted the complaint on which the investigation is based;

[(B) the contractor concerned, if any; and

[(C) the Secretary of Energy.

[(k) REMEDIAL ACTION.—(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—

[(A) in the case of a Department employee, take appropriate actions to abate the action; or

[(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.

[(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

[(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

[(l) RELATIONSHIP TO OTHER LAWS.—The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–512) or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

[(m) ANNUAL REPORT.—(1) Not later than 30 days after the commencement of each fiscal year, the Director 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 investigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

[(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

[(n) IMPLEMENTATION REPORT.—Not later than 60 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 describing the implementation of the program required by this section.]

## Subtitle F—Other Matters

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**[SEC. 3172. INTEGRATED FISSILE MATERIALS MANAGEMENT PLAN.**

[(a) PLAN.—The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—

[(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to achieve budgetary and other efficiencies in the discharge of those responsibilities; and

[(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.

[(b) SUBMITTAL TO CONGRESS.—The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.

**[SEC. 3173. IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES.**

[(a) AMOUNTS FOR DECLASSIFICATION OF RECORDS.—The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.

[(b) CERTIFICATION REQUIRED WITH RESPECT TO AUTOMATIC DECLASSIFICATION OF RECORDS.—No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.

[(c) REPORT ON AUTOMATIC DECLASSIFICATION OF DEPARTMENT OF ENERGY RECORDS.—Not later than February 1, 2001, the Sec-

retary of Energy 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 efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:

[(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.

[(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.

[(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.]

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# TITLE XXXIV—NATIONAL DEFENSE STOCKPILE

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**SEC. 3402. DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.**

(a) * * *

(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.]

*(3) $310,000,000 before the end of fiscal year 2008; and*

*(4) $320,000,000 before the end of fiscal year 2009.*

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## SECTION 125 OF THE MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001

[SEC. 125. (a) Not later than 60 days before issuing any solicitation for a contract with the private sector for military family housing the Secretary of the military department concerned shall submit to the congressional defense committees the notice described in subsection (b).

[(b)(1) A notice referred to in subsection (a) is a notice of any guarantee (including the making of mortgage or rental payments) proposed to be made by the Secretary to the private party under the contract involved in the event of—

[(A) the closure or realignment of the installation for which housing is provided under the contract;

[(B) a reduction in force of units stationed at such installation; or

[(C) the extended deployment overseas of units stationed at such installation.

[(2) Each notice under this subsection shall specify the nature of the guarantee involved and assess the extent and likelihood, if any, of the liability of the Federal Government with respect to the guarantee.

[(c) In this section, the term "congressional defense committees" means the following:

[(1) The Committee on Armed Services and the Military Construction Subcommittee, Committee on Appropriations of the Senate.

[(2) The Committee on Armed Services and the Military Construction Subcommittee, Committee on Appropriations of the House of Representatives.]

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## SECTION 8019 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2001

SEC. 8019. 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] *of Congress*.

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## FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

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**DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS**

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# TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

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## Subtitle B—Information Technology

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**SEC. 814. NAVY-MARINE CORPS INTRANET.**

(a) * * *

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(d) APPLICABILITY OF STATUTORY AND REGULATORY REQUIREMENTS.—The acquisition of a Navy-Marine Corps Intranet shall be managed by the Department of the Navy in accordance with the requirements of—

(1) [the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106)] *subtitle III of title 40, United States Code*, including the requirement for utilizing modular contracting in accordance with section 38 of the Office of Federal Procurement Policy Act (41 U.S.C. 434); and

* * * * * * *

SUBTITLE C—OTHER ACQUISITION-RELATED MATTERS

**SEC. 821. IMPROVEMENTS IN PROCUREMENTS OF SERVICES.**

(a) * * *

[(b) INCENTIVE FOR USE OF PERFORMANCE-BASED SERVICE CONTRACTS.—(1) A Department of Defense performance-based service contract or performance-based task order may be treated as a contract for the procurement of commercial items if—

[(A) the contract or task order is valued at $5,000,000 or less;

[(B) the contract or task order sets forth specifically each task to be performed and, for each task—

[(i) defines the task in measurable, mission-related terms;

[(ii) identifies the specific end products or output to be achieved; and

[(iii) contains a firm fixed price; and

[(C) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

[(2) The special simplified procedures provided in the Federal Acquisition Regulation pursuant to section 2304(g)(1)(B) of title 10, United States Code, shall not apply to a performance-based service contract or performance-based task order that is treated as a contract for the procurement of commercial items under paragraph (1).

[(3) Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit a report on the implementation of this subsection to the congressional defense committees.

[(4) The authority under this subsection shall not apply to contracts entered into or task orders issued more than 3 years after the date of the enactment of this Act.]

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# TITLE X—GENERAL PROVISIONS

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## Subtitle A—Financial Matters

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**SEC. 1006. REQUIREMENT FOR PROMPT PAYMENT OF CONTRACT VOUCHERS.**

(a) * * *

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[(c) CONDITIONAL REQUIREMENT FOR REPORT.—(1) If for any month of the noncompliance reporting period the requirement in section 2226 of title 10, United States Code (as added by subsection (a)), is not met, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the magnitude of the unpaid contract vouchers. The report for a month shall be submitted not later than 30 days after the end of that month.

[(2) A report for a month under paragraph (1) shall include information current as of the last day of the month as follows:

[(A) The number of the vouchers received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system during each month.

[(B) The number of the vouchers so received, whenever received by the Defense Finance and Accounting Service, that remain unpaid for each of the following periods:

[(i) Over 30 days and not more than 60 days.

[(ii) Over 60 days and not more than 90 days.

[(iii) More than 90 days.

[(C) The number of the vouchers so received that remain unpaid for the major categories of procurements, as defined by the Secretary of Defense.

[(D) The corrective actions that are necessary, and those that are being taken, to ensure compliance with the requirement in subsection (a).

[(3) For purposes of this subsection:

[(A) The term "noncompliance reporting period" means the period beginning on December 1, 2000, and ending on November 30, 2004.

[(B) The term "contract voucher" has the meaning given that term in section 2226(b) of title 10, United States Code (as added by subsection (a)).]

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# TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

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**SEC. 1308. REPORTS ON ACTIVITIES AND ASSISTANCE UNDER COOPERATIVE THREAT REDUCTION PROGRAMS.**

(a) * * *

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(c) MATTERS TO BE INCLUDED.—The report under subsection (a) in a year shall set forth the following:

(1) * * *

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[(6)] *(7)* To the maximum extent practicable, a description of how revenue generated by activities carried out under Cooperative Threat Reduction programs in recipient States is being utilized, monitored, and accounted for.

[(7)] *(8)* A description of the defense and military activities carried out under Cooperative Threat Reduction programs during the fiscal year ending in the year preceding the year of the report, including—

(A) * * *

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## SECTION 8009 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code[, and these obligations shall be reported to the Congress] as of September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical serv-

ices at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

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## SECTION 1121 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

**[SEC. 1121. 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

[(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 polygraph 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-countermeasures; 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.]

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## SECTION 8053 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1998

[SEC. 8053. None of the funds provided in this Act and hereafter shall be available for use by a military department to modify an aircraft, weapon, ship or other item of equipment, that the military department concerned plans to retire or otherwise dispose of within 5 years after completion of the modification: *Provided*, That this prohibition shall not apply to safety modifications: *Provided further*, That this prohibition may be waived by the Secretary of a military department if the Secretary determines it is in the best national security interest of the United States to provide such

waiver and so notifies the congressional defense committees in writing.]

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## FEDERAL ACQUISITION STREAMLINING ACT OF 1994

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# TITLE I—CONTRACT FORMATION

## Subtitle A—Competition Statutes

## PART I—ARMED SERVICES ACQUISITIONS

### Subpart A—Competition Requirements

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**SEC. 1004. TASK AND DELIVERY ORDER CONTRACTS.**

(a) * * *

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(d) PROVISIONS NOT AFFECTED.—Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c), shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities [under—

[(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)); and

[(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).] *under chapter 11 of title 40, United States Code.*

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# TITLE VIII—COMMERCIAL ITEMS

## Subtitle A—Definitions and Regulations

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**SEC. 8002. REGULATIONS ON ACQUISITION OF COMMERCIAL ITEMS.**

(a) * * *

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(d) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include, for acquisitions of commercial items—

(1) a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable; [and]

(2) a prohibition on use of cost type contracts[.]*; and*

*(3) authority for use of a time and materials contract or a labor-hour contract for the procurement of commercial services that are commonly sold to the general public through such contracts.*

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## SECTION 1520 OF THE ARMED FORCES RETIREMENT HOME ACT OF 1991

**SEC. 1520. DISPOSITION OF EFFECTS OF DECEASED PERSONS; UNCLAIMED PROPERTY**

(a) * * *

(b) SALE OF EFFECTS.—(1)(A) * * *

* * * * * * *

(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 *Armed Forces* 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.

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## SECTION 30305 OF TITLE 49, UNITED STATES CODE

### § 30305. Access to Register information

(a) * * *

(b) REQUESTS TO OBTAIN INFORMATION.—(1) * * *

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*(9) An individual who is being investigated for—*

*(A) eligibility for access to a particular level of classified information for purposes of Executive Order 12968, or any successor Executive order; or*

*(B) Federal employment under authority of Executive Order 10450, or any successor Executive order,*

*may request the chief driver licensing official of a State to provide information about the individual pursuant to subsection (a) of this section to a Federal department or agency that is authorized to investigate the individual for the purpose of assisting in the determination of the eligibility of the individual for access to classified information or for Federal employment. A Federal department or agency that receives such information about an individual may use it in accordance with applicable law. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.*

[(9)] *(10)* A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

[(10)] *(11)* An individual may request the chief driver licensing official of a State to obtain information about the individual under subsection (a) of this section—

(A) * * *

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[(11)] *(12)* The head of a Federal department or agency authorized to receive information regarding an individual from the Register under this section may request and receive such information from the Secretary.

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## SECTION 19 OF THE NATIONAL SECURITY AGENCY ACT OF 1959

*SEC. 19. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Security Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Security 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 Security Agency that document the means by which foreign intelligence or counterintelligence is collected through technical systems.*

*(B) Files that contain 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 of title 5 or section 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 the National Security Agency.*

*(vi) The Office of the Director of the National Security Agency.*

*(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) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.*

*(D) 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 the National Security Agency 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 which is filed with, or produced for, the court by the National Security Agency, 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, the National Security Agency 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 responsive records currently perform the functions set forth in paragraph (2).*

*(II) The court may not order the National Security Agency 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 the National Security Agency'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 admission may be made pursuant to rules 26 and 36.*

*(vi) If the court finds under this paragraph that the National Security Agency has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order the Agency 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 the National Security Agency 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 Security 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 the National Security Agency 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 the National Security Agency 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 the National Security Agency, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.*

## SECTION 207 OF TITLE 18, UNITED STATES CODE

### § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) * * *

* * * * * * *

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) * * *

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) * * *

[(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,]

*(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 96 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the Federal Employees Pay for Performance Act of 2003, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,*

* * * * * * *

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## TITLE 31, UNITED STATES CODE

* * * * * * *

# SUBTITLE II—THE BUDGET PROCESS

* * * * * * *

## CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

* * * * * * *

### § 1115. Performance plans

(a) In carrying out the provisions of [section 1105(a)(29)] *section 1105(a)(28)*, the Director of the Office of Management and Budget shall require each agency to prepare an annual perform-

ance plan covering each program activity set forth in the budget of such agency. Such plan shall—

(1) * * *

* * * * * * *

# SUBTITLE III—FINANCIAL MANAGEMENT

* * * * * * *

## CHAPTER 33—DEPOSITING, KEEPING, AND PAYING MONEY

* * * * * * *

SUBCHAPTER III—MISCELLANEOUS

* * * * * * *

### § 3342. Check cashing and exchange transactions

(a) * * *

(b) A disbursing official may act under subsection (a) (1) and (2) of this section [only for—] *only for the following:*

(1) [an] *An* official purpose[;].

(2) [personnel] *Personnel* of the Government[;].

(3) [a] *A* dependent of personnel of the Government, but only—

(A) * * *

(B) in the case of negotiation of negotiable instruments, if the dependent's sponsor authorizes, in writing, the presentation of negotiable instruments to the disbursing official for negotiation[;].

(4) [a] *A* veteran hospitalized or living in an institution operated by an agency[;].

(5) [a] *A* contractor, or personnel of a contractor, carrying out a Government project[;].

(6) [personnel] *Personnel* of an authorized agency not part of the Government that operates with an agency of the Government[; or].

(7) [a] *A* Federal credit union (as defined in section 101(1) of the Federal Credit Union Act (12 U.S.C. [1752(1))] *1752(1)))* that at the request of the Secretary of Defense is operating on a United States military installation in a foreign country, but only if that country does not permit contractor-operated military banking facilities to operate on such installations.

*(8) A member of the military forces of an allied or coalition nation who is participating in a joint operation, joint exercise, humanitarian mission, or peacekeeping mission with the Armed Forces of the United States, but—*

*(A) only if—*

*(i) such disbursing official action for members of the military forces of that nation is approved by the senior United States military commander assigned to that operation or mission; and*

*(ii) that nation has guaranteed payment for any deficiency resulting from such disbursing official action; and*

*(B) in the case of negotiable instruments, only for a negotiable instrument drawn on a financial institution located in the United States or on a foreign branch of such an institution.*

* * * * * * *

## CHAPTER 35—ACCOUNTING AND COLLECTION

* * * * * * *

### SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

* * * * * * *

**§ 3553. Review of protests; effect on contracts pending decision**

(a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—

(A) the date that is 10 days after the date of the contract award; **[**or**]**

(B) the date that is 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required**[**.**]***; or*

*(C) in the case of a protest of the same matter regarding such contract that is submitted under section 2305b of title 10 or section 303N of the Federal Property and Administrative Services Act of 1949, the date that is 5 days after the date on which a decision on that protest is issued.*

* * * * * * *

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## OFFICE OF FEDERAL PROCUREMENT POLICY ACT

* * * * * * *

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * * * *

**[**Sec. 16. Executive agency responsibilities.**]**

*Sec. 16. Chief Acquisition Officers.*

*Sec. 16A. Chief Acquisition Officers Council.*

* * * * * * *

*Sec. 40. Protection of constitutional rights of contractors.*

*Sec. 41. Incentives for efficient performance of services contracts.*

* * * * * * *

**SEC. 4. DEFINITIONS.**

As used in this Act:

(1) * * *

* * * * * * *

(11) The term "simplified acquisition threshold" means $100,000*, except that such amount may be adjusted by the Administrator every five years to the amount equal to $100,000 in constant fiscal year 2003 dollars (rounded to the nearest $10,000)*.

(12) The term "commercial item" means any of the following:

(A) * * *

* * * * * * *

(F) Services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established [catalog or] market prices for specific tasks performed *or specific outcomes to be achieved* and under standard commercial terms and conditions.

* * * * * * *

*(I) Items or services produced or provided by a commercial entity.*

* * * * * * *

*(16) The term "acquisition"—*

*(A) means the process of acquiring, with appropriated funds, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and*

*(B) includes—*

*(i) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;*

*(ii) the description of requirements to satisfy agency needs;*

*(iii) solicitation and selection of sources;*

*(iv) award of contracts;*

*(v) contract performance;*

*(vi) contract financing:*

*(vii) management and measurement of contract performance through final delivery and payment; and*

*(viii) technical and management functions directly related to the process of fulfilling agency requirements by contract.*

*(17) The term "commercial entity" means any enterprise whose primary customers are other than the Federal Government. In order to qualify as a commercial entity, at least 90 percent (in dollars) of the sales of the enterprise over the past three business years must have been made to private sector entities.*

* * * * * * *

**[SEC. 16. EXECUTIVE AGENCY RESPONSIBILITIES.**

[To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

[(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

[(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

[(A) direct access to the head of the major organizational element of the executive agency served; and

[(B) comparative equality with organizational counterparts;

[(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

[(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.]

***SEC. 16. AGENCY CHIEF ACQUISITION OFFICERS.***

*(a) ESTABLISHMENT OF AGENCY CHIEF ACQUISITION OFFICERS.—The head of each executive agency (other than the Department of Defense) shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency, who shall—*

*(1) have acquisition management as that official's primary duty; and*

*(2) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.*

*(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF ACQUISITION OFFICERS.—The functions of each Chief Acquisition Officer shall include—*

*(1) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;*

*(2) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery*

*schedules) at the best value considering the nature of the property or service procured;*

*(3) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;*

*(4) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;*

*(5) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and*

*(6) as part of the strategic planning and performance evaluation process required under section 306 of title 5, United States Code, and sections 1105(a)(28), 1115, 1116, and 9703 of title 31, United States Code—*

*(A) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;*

*(B) in order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and*

*(C) reporting to the head of the executive agency on the progress made in improving acquisition management capability.*

***SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.***

*(a) ESTABLISHMENT.—There is established in the executive branch a Chief Acquisition Officers Council.*

*(b) MEMBERSHIP.—The members of the Council shall be as follows:*

*(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as Chairman of the Council.*

*(2) The Administrator for Federal Procurement Policy.*

*(3) The chief acquisition officer of each executive agency.*

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

*(5) Any other officer or employee of the United States designated by the Chairman.*

*(c) LEADERSHIP; SUPPORT.—(1) The Administrator for Federal Procurement Policy shall lead the activities of the Council on behalf of the Deputy Director for Management.*

*(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.*

*(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.*

*(3) The Administrator of General Services shall provide administrative and other support for the Council.*

*(d) PRINCIPAL FORUM.—The Council is designated the principal interagency forum for monitoring and improving the Federal acquisition system.*

*(e) FUNCTIONS.—The Council shall perform functions that include the following:*

*(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.*

*(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.*

*(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.*

*(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.*

*(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.*

*(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.*

*(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.*

* * * * * * *

**SEC. 20. ADVOCATES FOR COMPETITION.**

(a)(1) * * *

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984 (other than the [senior procurement executive] *Chief Acquisition Officer* designated pursuant to section 16(3)) to serve as the advocate for competition;

* * * * * * *

(b) The advocate for competition of an executive agency shall—

(1) * * *

* * * * * * *

(3) identify and report to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency designated pursuant to section 16(3)—

(A) * * *

* * * * * * *

(4) prepare and transmit to such [senior procurement executive] *Chief Acquisition Officer* an annual report describing—

(A) * * *

* * * * * * *

(5) recommend to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency goals and the plans for increasing competition on a fiscal year basis;

(6) recommend to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to moti-

vate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

* * * * * * *

**SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.**

(a) * * *

* * * * * * *

(c) PROHIBITION ON CERTIFICATION REQUIREMENTS.—(1) * * *

(2)(A) A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) * * *

(ii) written justification for such certification requirement is provided to the head of the executive agency by the [senior procurement executive] *Chief Acquisition Officer* of the agency, and the head of the executive agency approves in writing the inclusion of such certification requirement.

* * * * * * *

**SEC. 37. ACQUISITION WORKFORCE.**

(a) * * *

* * * * * * *

(c) [SENIOR PROCUREMENT EXECUTIVE] *CHIEF ACQUISITION OFFICER* AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the [senior procurement executive] *Chief Acquisition Officer* of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The [senior procurement executive] *Chief Acquisition Officer* shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

* * * * * * *

(h) EDUCATION AND TRAINING.—

(1) * * *

* * * * * * *

*(3) ACQUISITION WORKFORCE TRAINING FUND.—(A) The Administrator of General Services shall establish an acquisition workforce training fund. The Administrator shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies other than the Department of Defense. The Administrator shall consult with the Administrator for Federal Procurement Policy in managing the fund.*

*(B) There shall be credited to the acquisition workforce training fund 5 percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts:*

*(i) Governmentwide task and delivery-order contracts entered into under sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h and 253i).*

*(ii) Governmentwide contracts for the acquisition of information technology as defined in section 11101 of title 40, United States Code, and multiagency acquisition contracts for such technology authorized by section 11314 of such title.*

*(iii) Multiple-award schedule contracts entered into by the Administrator of General Services.*

*(C) The head of an executive agency that administers a contract described in subparagraph (B) shall remit to the General Services Administration the amount required to be credited to the fund with respect to such contract at the end of each quarter of the fiscal year.*

*(D) The Administrator of General Services, through the Office of Federal Acquisition Policy, shall ensure that funds collected for training under this section are not used for any purpose other than the purpose specified in subparagraph (A).*

*(E) Amounts credited to the fund shall be in addition to funds requested and appropriated for education and training referred to in paragraph (1).*

*(F) Amounts credited to the fund shall remain available until expended.*

* * * * * * *

**SEC. [39.] *40.* PROTECTION OF CONSTITUTIONAL RIGHTS OF CONTRACTORS.**

(a) * * *

* * * * * * *

***SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF SERVICES CONTRACTS.***

*(a) OPTIONS FOR SERVICES CONTRACTS.—An option included in a contract for services to extend the contract by one or more periods may provide that it be exercised on the basis of exceptional performance by the contractor. A contract that contains such an option provision shall include performance standards for measuring performance under the contract, and to the maximum extent practicable be performance-based. Such option provision shall only be exercised in accordance with applicable provisions of law or regulation that set forth restrictions on the duration of the contract containing the option.*

*(b) INCENTIVE FOR USE OF PERFORMANCE-BASED SERVICES CONTRACTS.—(1) A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—*

*(A) the contract or task order sets forth specifically each task to be performed and, for each task—*

*(i) defines the task in measurable, mission-related terms; and*

*(ii) identifies the specific end products or output to be achieved; and*

*(B) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.*

*(2) The regulations implementing this subsection shall require agencies to collect and maintain reliable data sufficient to identify*

*the contracts or task orders treated as contracts for commercial items using the authority of this subsection. The data may be collected using the Federal Procurement Data System or other reporting mechanism.*

*(3) Not later than two years after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Governmental Affairs and on Armed Services of the Senate and the Committees on Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this subsection. The report shall include data on the use of such authority both government-wide and for each department and agency.*

*(4) The authority under this subsection shall expire 10 years after the date of the enactment of this subsection.*

*(c) DEFINITION OF PERFORMANCE-BASED.—In this section, the term "performance-based", with respect to a contract, task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.*

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## FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

### TITLE III—PROCUREMENT PROCEDURE

* * * * * * *

**SEC. 302C. IMPLEMENTATION OF FACNET CAPABILITY.**

(a) * * *

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each executive agency shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the [senior procurement executive] *Chief Acquisition Officer* designated for the executive agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

**SEC. 303. COMPETITION REQUIREMENTS.**

(a) * * *

* * * * * * *

(f)(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) * * *

(B) the justification is approved—

(i) * * *

* * * * * * *

(iii) in the case of a contract for an amount exceeding $50,000,000, by the [senior procurement executive] *Chief Acquisition Officer* of the agency designated pursuant to

section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

* * * * * * *

***SEC. 303N. PROTESTS.***

*(a) IN GENERAL.—An interested party may protest an acquisition of supplies or services by an executive agency based on an alleged violation of an acquisition law or regulation, and a decision regarding such alleged violation shall be made by the agency in accordance with this section.*

*(b) RESTRICTION ON CONTRACT AWARD PENDING DECISION.—(1) Except as provided in paragraph (2), a contract may not be awarded by an agency after a protest concerning the acquisition has been submitted under this section and while the protest is pending.*

*(2) The head of the acquisition activity responsible for the award of a contract may authorize the award of the contract, notwithstanding a pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.*

*(c) RESTRICTION ON CONTRACT PERFORMANCE PENDING DECISION.—(1) Except as provided in paragraph (2), performance of a contract may not be authorized (and performance of the contract shall cease if performance has already begun) in any case in which a protest of the contract award is submitted under this section before the later of—*

*(A) the date that is 10 days after the date of contract award; or*

*(B) the date that is five days after an agency debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required, under section 303B(e) of this title.*

*(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.*

*(d) DEADLINE FOR DECISION.—The head of an executive agency shall issue a decision on a protest under this section not later than the date that is 20 working days after the date on which the protest is submitted to the executive agency.*

*(e) CONSTRUCTION.—Nothing in this section shall affect the right of an interested party to file a protest with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code, or in the United States Court of Federal Claims.*

*(f) DEFINITIONS.—In this section, the terms "protest" and "interested party" have the meanings given such terms in section 3551 of title 31, United States Code.*

* * * * * * *

**SEC. 317. SHARE-IN-SAVINGS CONTRACTS.**

(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) * * *

* * * * * * *

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is

to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the [senior procurement executive] *Chief Acquisition Officer* of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

* * * * * * *

***SEC. 318. AUTHORITY TO ENTER INTO CERTAIN TRANSACTIONS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.***

*(a) AUTHORITY.—*

*(1) IN GENERAL.—The head of an executive agency who engages in basic research, applied research, advanced research, and development projects that—*

*(A) are necessary to the responsibilities of such official's executive agency in the field of research and development, and*

*(B) have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack,*

*may exercise the same authority (subject to the same restrictions and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code, except for subsections (b) and (f) of such section 2371.*

*(2) PROTOTYPE PROJECTS.—The head of an executive agency may, under the authority of paragraph (1), carry out prototype projects that meet the requirements of subparagraphs (A) and (B) of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note). In applying the requirements and conditions of that section 845—*

*(A) subsection (c) of that section shall apply with respect to prototype projects carried out under this paragraph; and*

*(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under subsection (d) of that section.*

*(3) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—*

*(A) OMB AUTHORIZATION REQUIRED.—The head of an executive agency may exercise authority under this subsection only if authorized by the Director of the Office of Management and Budget to do so.*

*(B) RELATIONSHIP TO AUTHORITY OF DEPARTMENT OF HOMELAND SECURITY.—The authority under this subsection shall not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (Public Law 107-296; 116 Stat. 2224) is in effect.*

*(b) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under subsection (h) of section 2371 of title 10, United States Code, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on*

*Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.*

*(c) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section.*

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## SECTION 403 OF THE FEDERAL FINANCIAL MANAGEMENT ACT OF 1994

**SEC. 403. FRANCHISE FUND PILOT PROGRAMS.**

(a) * * *

* * * * * * *

(f) TERMINATION.—The provisions of this section shall expire on [October 1, 2003] *October 1, 2006.*

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## TITLE 40, UNITED STATES CODE

* * * * * * *

# SUBTITLE III—INFORMATION TECHNOLOGY MANAGEMENT


| CHAPTER | | Sec. |
|---|---|---|
| 111. | GENERAL | 11101 |
| * | * | * |
| [115. | INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM | 11501] |
| * | * | * |


## [CHAPTER 115—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM


[SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

[Sec.
[11501. Authority to conduct pilot program.
[11502. Evaluation criteria and plans.
[11503. Report.
[11504. Recommended legislation.
[11505. Rule of construction.

[SUBCHAPTER II—SPECIFIC PILOT PROGRAM


### [SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

### [§ 11501. Authority to conduct pilot program

[(a) IN GENERAL.—

[(1) PURPOSE.—In consultation with the Administrator for the Office of Information and Regulatory Affairs, the Administrator for Federal Procurement Policy may conduct a pilot program pursuant to the requirements of section 11521 of this title to test alternative approaches for the acquisition of information technology by executive agencies.

[(2) MULTIAGENCY, MULTI-ACTIVITY CONDUCT OF EACH PROGRAM.—Except as otherwise provided in this chapter, the pilot program conducted under this chapter shall be carried out in not more than two procuring activities in each of the executive agencies that are designated by the Administrator for Federal

Procurement Policy in accordance with this chapter to carry out the pilot program. With the approval of the Administrator for Federal Procurement Policy, the head of each designated executive agency shall select the procuring activities of the executive agency that are to participate in the test and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of the pilot program within the executive agency.

[(b) LIMITATION ON AMOUNT.—The total amount obligated for contracts entered into under the pilot program conducted under this chapter may not exceed $750,000,000. The Administrator for Federal Procurement Policy shall monitor those contracts and ensure that contracts are not entered into in violation of this subsection.

[(c) PERIOD OF PROGRAMS.—

[(1) IN GENERAL.—Subject to paragraph (2), the pilot program may be carried out under this chapter for the period, not in excess of five years, the Administrator for Federal Procurement Policy determines is sufficient to establish reliable results.

[(2) CONTINUING VALIDITY OF CONTRACTS.—A contract entered into under the pilot program before the expiration of that program remains in effect according to the terms of the contract after the expiration of the program.

**[§ 11502. Evaluation criteria and plans**

[(a) MEASURABLE TEST CRITERIA.—To the maximum extent practicable, the head of each executive agency conducting the pilot program under section 11501 of this title shall establish measurable criteria for evaluating the effects of the procedures or techniques to be tested under the program.

[(b) TEST PLAN.—Before the pilot program may be conducted under section 11501 of this title, the Administrator for Federal Procurement Policy shall submit to Congress a detailed test plan for the program, including a detailed description of the procedures to be used and a list of regulations that are to be waived.

**[§ 11503. Report**

[(a) REQUIREMENT.—Not later than 180 days after the completion of the pilot program under this chapter, the Administrator for Federal Procurement Policy shall—

[(1) submit to the Director of the Office of Management and Budget a report on the results and findings under the program; and

[(2) provide a copy of the report to Congress.

[(b) CONTENT.—The report shall include—

[(1) a detailed description of the results of the program, as measured by the criteria established for the program; and

[(2) a discussion of legislation that the Administrator recommends, or changes in regulations that the Administrator considers necessary, to improve overall information resources management in the Federal Government.

**[§ 11504. Recommended legislation**

[If the Director of the Office of Management and Budget determines that the results and findings under the pilot program under this chapter indicate that legislation is necessary or desirable to improve the process for acquisition of information technology, the Director shall transmit the Director's recommendations for that legislation to Congress.

**[§ 11505. Rule of construction**

[This chapter does not authorize the appropriation or obligation of amounts for the pilot program authorized under this chapter.

[SUBCHAPTER II—SPECIFIC PILOT PROGRAM]

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## CHAPTER 35 OF TITLE 44, UNITED STATES CODE

## CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER I—FEDERAL INFORMATION POLICY

Sec.
3501. Purposes.

* * * * * * *

SUBCHAPTER II—INFORMATION SECURITY

[Sec.
[3531. Purposes.
[3532. Definitions.
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[3538. Effect on existing law.

[SUBCHAPTER III—INFORMATION SECURITY]

Sec.
3541. Purposes.

* * * * * * *

## [SUBCHAPTER II—INFORMATION SECURITY

**[§ 3531. Purposes**

[The purposes of this subchapter are to—

[(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

[(2) recognize the highly networked nature of the current Federal computing environment and 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) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

[(4) provide a mechanism for improved oversight of Federal agency information security programs;

[(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

[(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.

**[§ 3532. Definitions**

[(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

[(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

[(1) the term "information security" means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

[(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

[(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

[(C) availability, which means ensuring timely and reliable access to and use of information; and

[(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

[(2) the term "national security system" means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

[(A) involves intelligence activities;

[(B) involves cryptologic activities related to national security;

[(C) involves command and control of military forces;

[(D) involves equipment that is an integral part of a weapon or weapons system; or

[(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

[(3) the term "information technology" has the meaning given that term in section 11101 of title 40; and

[(4) the term "information system" means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

[(A) computers and computer networks;

[(B) ancillary equipment;

[(C) software, firmware, and related procedures;

[(D) services, including support services; and

[(E) related resources.

**[§ 3533. Authority and functions of the Director**

[(a) The Director shall oversee agency information security policies and practices, by—

[(1) promulgating information security standards under section 11331 of title 40;

[(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

[(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

[(A) information collected or maintained by or on behalf of an agency; or

[(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

[(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

[(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

[(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

[(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

[(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

[(A) a summary of the findings of evaluations required by section 3535;

[(B) significant deficiencies in agency information security practices;

[(C) planned remedial action to address such deficiencies; and

[(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

[(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

**[§ 3534. Federal agency responsibilities**

[(a) The head of each agency shall—

[(1) be responsible for—

[(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

[(i) information collected or maintained by or on behalf of the agency; and

[(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

[(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

[(i) information security standards promulgated by the Director under section 11331 of title 40; and

[(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

[(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

[(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

[(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

[(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

[(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

[(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

[(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

[(A) designating a senior agency information security officer who shall—

[(i) carry out the Chief Information Officer's responsibilities under this section;

[(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

[(iii) have information security duties as that official's primary duty; and

[(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

[(B) developing and maintaining an agencywide information security program as required by subsection (b);

[(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

[(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

[(E) assisting senior agency officials concerning their 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 other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

[(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

[(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

[(2) policies and procedures that—

[(A) are based on the risk assessments required by paragraph (1);

[(B) cost-effectively reduce information security risks to an acceptable level;

[(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

[(D) ensure compliance with—

[(i) the requirements of this subchapter;

[(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

[(iii) minimally acceptable system configuration requirements, as determined by the agency; and

[(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

[(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

[(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

[(A) information security risks associated with their activities; and

[(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

[(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

[(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

[(B) may include testing relied on in a evaluation under section 3535;

[(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

[(7) procedures for detecting, reporting, and responding to security incidents, including—

[(A) mitigating risks associated with such incidents before substantial damage is done; and

[(B) notifying and consulting with, as appropriate—

[(i) law enforcement agencies and relevant Offices of Inspector General;

[(ii) an office designated by the President for any incident involving a national security system; and

[(iii) any other agency or office, in accordance with law or as directed by the President; and

[(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

[(c) Each agency shall—

[(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce,

Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

[(2) address 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 1 of this chapter;

[(C) information technology management under subtitle III of title 40;

[(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

[(E) financial management under chapter 9 of title 31, 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);

[(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

[(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the "Federal Managers Financial Integrity Act"); and

[(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

[(A) as a material weakness in reporting under section 3512 of title 31; and

[(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

[(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, 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, that are necessary to implement the program required under subsection (b).

[(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

[(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

**[§ 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 to determine the effectiveness of such program and practices.

[(2) Each evaluation by an agency under this section shall include—

[(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

[(B) an assessment (made on the basis of the results of the testing) of compliance with—

[(i) the requirements of this subchapter; and

[(ii) related information security policies, procedures, standards, and guidelines; and

[(C) separate presentations, as appropriate, regarding information security relating to national security systems.

[(b) Subject to subsection (c)—

[(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

[(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

[(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

[(1) only by an entity designated by the agency head; and

[(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

[(d) The evaluation required by this section—

[(1) shall be performed in accordance with generally accepted government auditing standards; and

[(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

[(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

[(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

[(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

[(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

[(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central In-

telligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

[(h) The Comptroller General shall periodically evaluate and report to Congress on—

[(1) the adequacy and effectiveness of agency information security policies and practices; and

[(2) implementation of the requirements of this subchapter.

**[§ 3536. Expiration**

[This subchapter shall not be in effect after May 31, 2003.

**[§ 3537. Authorization of appropriations**

[There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

**[§ 3538. Effect on existing law**

[Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.]

SUBCHAPTER [III] *II*—INFORMATION SECURITY

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**§ 3549. Effect on existing law**

Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States. [While this subchapter is in effect, subchapter II of this chapter shall not apply.]

## MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 2002

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**SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

**Army: Inside the United States**

| State | Installation or location | Amount |
|---|---|---|
| Alabama ..... | Anniston Army Depot ..... | $5,150,000 |
| * * | * * * | * * |
| Alaska ..... | Fort Richardson ..... | [$115,000,000] *$117,000,000* |
| * * | * * * | * * |
| Washington ..... | Fort Lewis ..... | $238,200,000 |
| | Total: ..... | [$1,358,750,000] *$1,364,750,000* |

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**SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.**

(a) * * *

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed—

(1) * * *

(2) [$52,000,000] *$54,000,000* (the balance of the amount authorized under section 2201(a) for construction of a barracks complex, D Street, at Fort Richardson, Alaska);

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## ACT OF JULY 22, 1970

**(Public Law 91–347)**

AN ACT To provide for the conveyance of certain real property of the Federal Government to the Board of Public Instruction, Okaloosa County, Florida.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, subject to section 3 of this Act, the Secretary of the Air Force shall donate, grant, and convey to the Board of Public Instruction for the County of Okaloosa, Florida, all right, title, and interest of the United States in and to the real property described in section 2 of this Act for use as permanent sites for Okaloosa County public schools *or for other public purposes*.

* * * * * * *

SEC. 3. The conveyance provided for by the first section of this Act shall be subject to the following conditions:

(1) The real property so conveyed shall be used as permanent sites for Okaloosa County public schools *or for other public purposes*, and if such property is not used for [such purpose] *such a purpose*, all right, title, and interest in and to such real property shall revert to the United States, which shall have the right of immediate entry thereon.

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## SECTION 148 OF THE ATOMIC ENERGY ACT OF 1954

SEC. 148. PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN UNCLASSIFIED INFORMATION.—

a. (1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the "Secretary")**[**, with respect to atomic energy defense programs,**]** shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of **[**production facilities or utilization facilities**]** *production facilities, utilization facilities, nuclear waste storage facilities, or uranium enrichment facilities, or any other facilities at which activities relating to nuclear weapons or nuclear materials are carried out, that are under the control or jurisdiction of the Secretary of Energy*;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) **[**production or utilization facilities**]** *such facilities*, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

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## SECTION 9 OF THE SHIPPING ACT, 1916

SEC. 9.

(b) * * *

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*(e) Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—*

*(1)(A) the Secretary, with the concurrence of the Secretary of Defense, determines that at least one replacement vessel of like capability and of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under the foreign registry; and*

*(B) the replacement vessel is not more than 10 years of age on the date of that documentation; and*

*(2) an operating agreement covering the vessel under the Maritime Security Act of 2003 has expired.*

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## MERCHANT MARINE ACT, 1936

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TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAMS

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[Subtitle B—Maritime Security Fleet Program

[ESTABLISHMENT OF FLEET

[SEC. 651. (a) IN GENERAL.—The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

[(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

[(1)(A) is operated by a person as an ocean common carrier;

[(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

[(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

[(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

[(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

[(2)(A)(i) is a United States-documented vessel; and

[(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

[(I) a LASH vessel that is 25 years of age or less; or

[(II) any other type of vessel that is 15 years of age or less;

except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

[(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

[(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

[(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

[OPERATING AGREEMENTS

[SEC. 652. (a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet,

that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

[(b) REQUIREMENTS FOR OPERATION.—An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

[(1) the vessel—

[(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

[(B) shall not otherwise be operated in the coastwise trade; and

[(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

[(c) REGULATORY RELIEF.—A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810. Participation in the program established by this subtitle shall not subject a contractor to section 805 or to any provision of subtitle A. The restrictions of section 901(b)(1) of this Act concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments under an operating agreement under this subtitle.

[(d) EFFECTIVENESS AND ANNUAL PAYMENT REQUIREMENTS OF OPERATING AGREEMENTS.—

[(1) EFFECTIVENESS.—The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

[(2) ANNUAL PAYMENT.—An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to $2,300,000 for fiscal year 1996 and $2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

[(e) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the ves-

sel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

[(f) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

[(g) LIMITATIONS.—The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

[(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

[(2) not operated or maintained in accordance with an operating agreement under this subtitle; or

[(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

[(A) is modernized after January 1, 1994,

[(B) is modernized before it is 25 years of age, and

[(C) is not more than 30 years of age.

[(h) PAYMENTS.—With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

[(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 App. U.S.C. 1241–1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

[(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo; and

[(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

[(i) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

[(1) VESSELS OWNED BY CITIZENS.—

[(A) PRIORITY.—First, for any vessel that is—

[(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

[(ii) less than 10 years of age and owned and operated by a corporation that is—

[(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

[(II) affiliated with a corporation operating or managing for the Secretary of Defense other ves-

sels documented under that chapter, or chartering other vessels to the Secretary of Defense.

[(B) LIMITATION ON NUMBER OF OPERATING AGREEMENTS.—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

[(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

[(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

[(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

[(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

[(C) TREATMENT OF RELATED PARTIES.—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

[(2) OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.—To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

[(A) a citizen of the United States under section 2 of the Shipping Act, 1916, that has not been awarded an operating agreement under the priority established under paragraph (1); or

[(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

[(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

[(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

[(j) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

[(k) REVERSION OF UNUSED AUTHORITY.—The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

[(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

[(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

[(l) PROCEDURE FOR CONSIDERING APPLICATION; EFFECTIVE DATE FOR CERTAIN VESSELS.—

[(1) PROCEDURES.—No later than 30 days after the date of the enactment of the Maritime Security Act of 1996, the Secretary shall accept applications for enrollment of vessels in the Fleet, and within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

[(2) EFFECTIVE DATE.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

[(m) EARLY TERMINATION.—An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation and the Secretary of Defense.

[(n) NONRENEWAL FOR LACK OF FUNDS.—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by section 655 for that fiscal year, the Secretary of Transportation shall notify the Congress that operating agreements authorized under this subtitle for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If funds are not appropriated under the authority provided by section 655 for any fiscal year by the 60th day of that fiscal year, then each vessel covered by an operating agreement under this subtitle for which funds are not available is thereby released from any further obligation under the operating agreement, and the vessel owner or operator may transfer and register such vessel under a

foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registration of the vessel under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

[(o) AWARD OF OPERATING AGREEMENTS.—

[(1) IN GENERAL.—The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.

[(2) NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

[(3) TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

[(4) PREFERENCE FOR UNITED STATES-BUILT VESSELS.—In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

[(p) NOTICE TO UNITED STATES SHIPBUILDERS REQUIRED.—The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

[NATIONAL SECURITY REQUIREMENTS

[SEC. 653. (a) EMERGENCY PREPAREDNESS AGREEMENT.—

[(1) REQUIREMENT TO ENTER AGREEMENT.—The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

[(2) TERMS OF AGREEMENT.—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security (including any natural disaster, international peace operation, or contingency operation (as that term is defined in section 101 of title 10, United States Code)), a contractor for a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreements shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

[(3) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 652(m), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement when the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

[(b) RESOURCES MADE AVAILABLE.—The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

[(c) COMPENSATION.—

[(1) IN GENERAL.—The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

[(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

[(A) shall not be less than the contractor's commercial market charges for like transportation resources;

[(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources to meet emergency requirements;

[(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

[(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

[(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

[(3) APPROVAL OF AMOUNT BY SECRETARY OF DEFENSE.—No compensation may be provided for a vessel under this subsection unless the amount of the compensation is approved by the Secretary of Defense.

[(d) TEMPORARY REPLACEMENT VESSELS.—Notwithstanding any other provision of this subtitle or of other law to the contrary—

[(1) a contractor or other person that commits to make available a vessel or vessel capacity under the Emergency Preparedness Program or another primary sealift readiness program approved by the Secretary of Defense may, during the activation of that vessel or capacity under that program, operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for the activated vessel or capacity; and

[(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 [46 App. U.S.C. 1241–1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

[(e) REDELIVERY AND LIABILITY OF UNITED STATES FOR DAMAGES.—

[(1) IN GENERAL.—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

[(2) LIMITATION ON LIABILITY OF UNITED STATES.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor's commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

[(3) LIMITATION ON APPLICATION OF OTHER REQUIREMENTS.—Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

[DEFINITIONS

[SEC. 654. In this subtitle:

[(1) BULK CARGO.—The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

[(2) CONTRACTOR.—The term "contractor" means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary of Transportation under section 652.

[(3) OCEAN COMMON CARRIER.—The term "ocean common carrier" means a person holding itself out to the general public to operate vessels to provide transportation by water of pas-

sengers or cargo between the United States and a foreign country for compensation, that—

[(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

[(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

[(4) FLEET.—The term "Fleet" means the Maritime Security Fleet established pursuant to section 651(a).

[(5) LASH VESSEL.—The term "LASH vessel" means a lighter aboard ship vessel.

[(6) UNITED STATES-DOCUMENTED VESSEL.—The term "United States-documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 655. There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, $100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed $100,000,000, for each fiscal year thereafter through fiscal year 2005.

[NONCONTIGUOUS DOMESTIC TRADES

[SEC. 656. (a)(1) Except as otherwise provided in this section, no contractor or related party shall receive payments pursuant to this subtitle during a period when it participates in a noncontiguous domestic trade, except upon written permission of the Secretary of Transportation. Such written permission shall also be required for any material change in the number or frequency of sailings, the capacity offered, or the domestic ports called by a contractor or related party in a noncontiguous domestic trade. The Secretary may grant such written permission pursuant to written application of such contractor or related party unless the Secretary finds that—

[(A) existing service in that trade is adequate; or

[(B) the service sought to be provided by the contractor or related party—

[(i) would result in unfair competition to any other person operating vessels in such noncontiguous domestic trade, or

[(ii) would be contrary to the objects and policy of this Act.

[(2) For purposes of this subsection, "written permission of the Secretary" means permission which states the capacity offered, the number and frequency of sailings, and the domestic ports called, and which is granted following—

[(A) written application containing the information required by paragraph (e)(1) by a person seeking such written permission, notice of which application shall be published in the Federal Register within 15 days of filing of such application with the Secretary;

[(B) holding of a hearing on the application under section 554 of title 5, United States Code, in which every person, firm or corporation having any interest in the application shall be permitted to intervene and be heard; and

[(C) final decision on the application by the Secretary within 120 days following conclusion of such hearing.

[(b)(1) Subsection (a) shall not apply in any way to provision by a contractor of service within the level of service provided by that contractor as of the date established by subsection (c) or to provision of service permitted by subsection (d).

[(2) Subsection (a) shall not apply to operation by a contractor of a self-propelled tank vessel in a noncontiguous domestic trade, or to ownership by a contractor of an interest in a self-propelled tank vessel that operates in a noncontiguous domestic trade.

[(c) The date referred to in subsection (b) shall be August 9, 1995: *Provided however,* That with respect to tug and barge service to Alaska the date referred to in subsection (b) shall be July 1, 1992.

[(d) A contractor may provide service in a trade in addition to the level of service provided as of the applicable date established by subsection (c) in proportion to the annual increase in real gross product of the noncontiguous State or Commonwealth served since the applicable date established by subsection (c).

[(e)(1) A person applying for award of an agreement under this subtitle shall include with the application a description of the level of service provided by that person in each noncontiguous domestic trade served as of the date applicable under subsection (c). The application also shall include, for each such noncontiguous domestic trade: a list of vessels operated by that person in such trade, their container carrying capacity expressed in twenty-foot equivalent units (TEUs) or other carrying capacity, the itinerary for each such vessel, and such other information as the Secretary may require by regulation. Such description and information shall be made available to the public. Within 15 days of the date of an application for an agreement by a person seeking to provide service pursuant to subsections (b) and (c) of this section, the Secretary shall cause to be published in the Federal Register notice of such description, along with a request for public comment thereon. Comments on such description shall be submitted to the Secretary within 30 days of publication in the Federal Register. Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting use of the applicant's description to establish the level of service provided as of the date applicable under subsection (c): *Provided,* That notwithstanding the

provisions of this subsection, processing of the application for an award of an agreement shall not be suspended or delayed during the time in which comments may be submitted with respect to the determination or during the time prior to issuance by the Secretary of the required determination: *Provided further,* That if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the description of the level of service provided by the applicant shall be deemed to be the level of service provided as of the applicable date until such time as the Secretary makes the determination.

[(2) No contractor shall implement the authority granted in subsection (d) of this section except as follows:

[(A) An application shall be filed with the Secretary which shall state the increase in capacity sought to be offered, a description of the means by which such additional capacity would be provided, the basis for applicant's position that such increase in capacity would be in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c), and such information as the Secretary may require so that the Secretary may accurately determine such increase in real gross product of the relevant noncontiguous State or Commonwealth.

[(B) Such increase in capacity sought by applicant and such information shall be made available to the public.

[(C) Within 15 days of the date of an application pursuant to this paragraph the Secretary shall cause to be published in the Federal Register notice of such application, along with a request for public comment thereon.

[(D) Comments on such application shall be submitted to the Secretary within 30 days of publication in the Federal Register.

[(E) Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting, the increase in capacity sought by the applicant as being in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c): *Provided,* That, notwithstanding the provisions of this section, if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the increase in capacity sought by applicant shall be permitted as being in proportion to or less than such increase in real gross product until such time as the Secretary makes the determination.

[(f) With respect to provision by a contractor of service in a noncontiguous domestic trade not authorized by this section, the Secretary shall deny payments under the operating agreement with respect to the period of provision of such service but shall deny payments only in part if the extent of provision of such unauthorized service was de minimis or not material.

[(g) Notwithstanding any other provision of this subtitle, the Secretary may issue temporary permission for any United States citizen, as that term is defined in section 2 of the Shipping Act, 1916, to provide service to a noncontiguous State or Common-

wealth upon the request of the Governor of such noncontiguous State or Commonwealth, in circumstances where an Act of God, a declaration of war or national emergency, or any other condition occurs that prevents ocean transportation service to such noncontiguous State or Commonwealth from being provided by persons currently providing such service. Such temporary permission shall expire 90 days from date of grant, unless extended by the Secretary upon written request of the Governor of such State or Commonwealth.

[(h) As used in this section:

[(1) The term "level of service provided by a contractor" in a trade as of a date means—

[(A) with respect to service other than service described in (B), the total annual capacity provided by the contractor in that trade for the 12 calendar months preceding that date: *Provided,* That, with respect to unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle and points in the contiguous 48 States, the level of service provided by a contractor shall include 100 percent of the capacity of the equipment dedicated to such service on the date specified in subsection (c) and actually utilized in that service in the two-year period preceding that date, excluding service to points between Anchorage, Alaska and Whittier, Alaska, served by common carrier service unless such unscheduled service is only for carriage of oil or pursuant to a contract with the United States military: *Provided further,* That, with respect to scheduled barge service between the contiguous 48 States and Puerto Rico, such total annual capacity shall be deemed as such total annual capacity plus the annual capacity of two additional barges, each capable of carrying 185 trailers and 100 automobiles; and

[(B) with respect to service provided by container vessels, the overall capacity equal to the sum of—

[(i) 100 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and frequency of sailing in effect on that date, and which participate solely in that noncontiguous domestic trade; and

[(ii) 75 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and frequency of sailing in effect on that date, and which participate in that noncontiguous domestic trade and in another trade, provided that the term does not include any restriction on frequency, or number of sailings, or on ports called within such overall capacity.

[(2) The level of service set forth in paragraph (1) shall be described with the specificity required by subsection (e)(1) and shall be the level of service in a trade with respect to the applicable date established by subsection (c) only if the service is not abandoned thereafter, except for interruptions due to military contingency or other events beyond the contractor's control.

[(3) The term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

[(4) The term "related party" means—

[(A) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under this subtitle; and

[(B) an officer, director, agent, or other executive of a contractor or of a person referred to in subparagraph (A).]

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## TITLE VIII—CONTRACT PROVISIONS

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[SEC. 804. (a) Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act.

[(b) Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

[(c) Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under title VI, or those in the foregoing specified relationship to him, who was not such a contractor on April 15,1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

[(1) Until April 15, 1990—

[(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

[(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in the foregoing specified relationship to him, were acting as agent or broker on April 15, 1970;

[(d) No contractor under title VI, whether he shall have become such a contractor before or after the date of enactment of this section, shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after the enactment of this section there shall have been filed with the Secretary of Trans-

portation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker, for, or operated on April 15, 1970.

[(e) During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 208 of this Act, a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

[(f) The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

[(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

[(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

[(A) the foreign-flag vessel was owned, chartered, or operated by, or is a replacement for a foreign-flag vessel owned, chartered, or operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1996;

[(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

[(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 [46 App. U.S.C. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1996, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

[(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

[(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

[(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.]

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TITLE XI—FEDERAL SHIP MORTGAGE INSURANCE

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SEC. 1103. (a) * * *

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*(i) PRIORITY.—In guaranteeing and entering commitments to guarantee under this section, the Secretary shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle C of the Maritime Security Act of 2003.*

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## SECTION 12102 OF TITLE 46, UNITED STATES CODE

### § 12102. Vessels eligible for documentation

(a) * * *

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(d)(1) * * *

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(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936 *or section 3511(b) of the Maritime Security Act of 2003*.

○