

“(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.”

Subsec. (k). Pub. L. 108-136, §1008(f)(1), added subsec. (k).

1999—Subsec. (j)(3)(B). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

#### CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE

Section 912(b) of Pub. L. 104-106 provided that: “Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.”

#### EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104-106, div. A, title IX, §912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107-314, div. A, title VIII, §825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that authority under section 2216(b) of this title to transfer funds into Defense Modernization Account terminated at close of Sept. 30, 2002, and the Account was to be closed three years later, prior to repeal by Pub. L. 108-136, div. A, title X, §1008(f)(2), Nov. 24, 2003, 117 Stat. 1587.

#### GAO REVIEWS

Pub. L. 104-106, div. A, title IX, §912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107-314, div. A, title VIII, §825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

#### [§ 2216a. Repealed. Pub. L. 105-261, div. A, title X, § 1008(b), Oct. 17, 1998, 112 Stat. 2117]

Section, added Pub. L. 104-106, div. A, title III, §371(a)(1), Feb. 10, 1996, 110 Stat. 277, §2216; renumbered §2216a and amended Pub. L. 104-201, div. A, title III, §§363(c), 364, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund.

#### § 2217. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term “defense budget” means the budget of the Department of Defense included in the President’s budget submitted to Congress under section 1105 of title 31 for a fiscal year.

(2) The term “common procurement weapon system” means a weapon system for which two or more of the Army, Navy, Air Force, and Marine Corps request procurement funds in a defense budget.

(Added Pub. L. 100-370, §1(d)(3)(A), July 19, 1988, 102 Stat. 843; amended Pub. L. 104-106, div. A, title XV, §1503(a)(20), Feb. 10, 1996, 110 Stat. 512.)

#### HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99-500, §101(c) [title X, §955], Oct. 18, 1986, 100 Stat. 1783-82, 1783-173, and Pub. L. 99-591, §101(c) [title X, §955], Oct. 30, 1986, 100 Stat. 3341-82, 3341-173; Pub. L. 99-661, div. A, title IX, formerly title IV, §955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273.

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “Under Secretary of Defense (Comptroller)” for “Comptroller of the Department of Defense”.

#### § 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and

maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as “ROS-4 status” in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a pre-

ferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term “Fund” means the National Defense Sealift Fund established by subsection (a).

(2) The term “Department of Defense sealift vessel” means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term “national defense sealift vessel” means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term “head of an agency” has the meaning given that term in section 2302(1) of this title.

(Added Pub. L. 102-484, div. A, title X, §1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102-396, title V, Oct. 6, 1992, 106 Stat. 1896; Pub. L. 104-106, div. A, title X, §1014(a), title XV, §1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; Pub. L. 106-65, div. A, title X, §§1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; Pub. L. 106-398, §1 [[div. A], title X, §1011], Oct. 30, 2000, 114 Stat. 1654, 1654A-251; Pub. L. 107-107, div. A, title X, §1048(e)(9), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 108-136, div. A, title X, §1043(b)(9), Nov.

24, 2003, 117 Stat. 1611; Pub. L. 109-163, div. A, title X, §1018(d), Jan. 6, 2006, 119 Stat. 3426; Pub. L. 109-304, §17(a)(2), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 110-417, [div. A], title XIV, §1407, Oct. 14, 2008, 122 Stat. 4647.)

#### REFERENCES IN TEXT

Section 1424 of Public Law 101-510, referred to in subsecs. (d)(3), (f)(2), and (k)(2)(A), is section 1424 of the National Defense Authorization Act for Fiscal Year 1991, which is set out as a note under section 7291 of this title.

#### CODIFICATION

Pub. L. 102-396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Authorization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102-484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after “expended only” down to and including “appropriations Act” and inserting in lieu thereof “in amounts authorized by law”. It further provided that for purposes of that amendment, Pub. L. 102-396 shall be treated as having been enacted after Pub. L. 102-484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, p. 30919] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, p. 31565].

#### AMENDMENTS

2008—Subsecs. (j), (k), Pub. L. 110-417, §1407(1), redesignated subsecs. (k) and (l) as (j) and (k), respectively, and struck out heading and text of former subsec. (j). Text read as follows: “Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).”

Subsec. (k)(2)(B) to (I). Pub. L. 110-417, §1407(2), added subpar. (B) and struck out former subpars. (B) to (I) which read as follows:

“(B) A maritime prepositioning ship.

“(C) An afloat prepositioning ship.

“(D) An aviation maintenance support ship.

“(E) A hospital ship.

“(F) A strategic sealift ship.

“(G) A combat logistics force ship.

“(H) A maritime prepositioned ship.

“(I) Any other auxiliary support vessel.”

Subsec. (l). Pub. L. 110-417, §1407(1), redesignated subsec. (l) as (k).

2006—Subsec. (d)(2). Pub. L. 109-304 substituted “sections 57101-57104 and chapter 573 of title 46” for “sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund”.

Subsec. (f)(1). Pub. L. 109-163 substituted “A vessel built in a foreign ship yard may not be” for “Not more than a total of five vessels built in foreign ship yards may be” and inserted “, unless specifically authorized by law” before period at end.

2003—Subsec. (l)(4), (5). Pub. L. 108-136 redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “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.”

2001—Subsec. (d)(1). Pub. L. 107-107 struck out “for fiscal years after fiscal year 1993” after “Department of Defense” in introductory provisions.

2000—Subsec. (k)(1). Pub. L. 106-398, § 1 [[div. A], title X, § 1011(1)], inserted at end “As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.”

Subsec. (k)(2)(E). Pub. L. 106-398, § 1 [[div. A], title X, § 1011(2)], added subpar. (E).

Subsec. (k)(6). Pub. L. 106-398, § 1 [[div. A], title X, § 1011(3)], added par. (6).

1999—Subsec. (k). Pub. L. 106-65, § 1015(a)(2), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(2). Pub. L. 106-65, § 1014(b), substituted “that is any of the following:” for “that is—” in introductory provisions, substituted “A” for “a” and a period for the semicolon in subpars. (A) and (B), “An” for “an” and a period for the semicolon in subpar. (C), “An” for “an” and a period for “; or” in subpar. (D), and “A” for “a” in subpar. (E), and added subpars. (F) to (I).

Subsec. (l). Pub. L. 106-65, § 1015(a)(1), redesignated subsec. (k) as (l).

Subsec. (l)(4)(B). Pub. L. 106-65, § 1067(1), substituted “Committee on Armed Services” for “Committee on National Security”.

Subsec. (l)(5). Pub. L. 106-65, § 1015(b), added par. (5).

1996—Subsec. (c)(1). Pub. L. 104-106, § 1014(a)(1)(A), substituted “only for the following purposes:” for “only for—”.

Subsec. (c)(1)(A). Pub. L. 104-106, § 1014(a)(1)(B), (C), substituted “Construction” for “construction” and “vessels.” for “vessels;”.

Subsec. (c)(1)(B). Pub. L. 104-106, § 1014(a)(1)(B), (C), substituted “Operation” for “operation” and “purposes.” for “purposes;”.

Subsec. (c)(1)(C). Pub. L. 104-106, § 1014(a)(1)(B), (D), substituted “Installation” for “installation” and “States.” for “States; and”.

Subsec. (c)(1)(D). Pub. L. 104-106, § 1014(a)(1)(B), substituted “Research” for “research”.

Subsec. (c)(1)(E). Pub. L. 104-106, § 1014(a)(1)(E), added subpar. (E).

Subsec. (i). Pub. L. 104-106, § 1014(a)(2), inserted “(other than subsection (c)(1)(E))” after “Nothing in this section”.

Subsec. (j). Pub. L. 104-106, § 1502(a)(15)(A), substituted “the congressional defense committees” for “the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives”.

Subsec. (k)(4). Pub. L. 104-106, § 1502(a)(15)(B), added par. (4).

1992—Subsec. (c)(2). Pub. L. 102-396 substituted “in amounts authorized by law” for “for programs, projects, and activities and only in amounts authorized in, or otherwise permitted under, an Act other than an appropriations Act”. See Codification note above.

## [§ 2219. Renumbered § 2491c]

### § 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(Added Pub. L. 103-355, title V, § 5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104-106,

div. A, title XV, § 1503(a)(20), div. D, title XLIII, § 4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105-85, div. A, title VIII, § 841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107-314, div. A, title X, § 1041(a)(8), Dec. 2, 2002, 116 Stat. 2645.)

#### AMENDMENTS

2002—Subsec. (a). Pub. L. 107-314, § 1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107-314, § 1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.”

Subsec. (c). Pub. L. 107-314, § 1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: “Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

“(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

“(2) identify suitable actions to be taken, including termination, with respect to such programs.”

1997—Subsec. (b). Pub. L. 105-85 substituted “whether major acquisition programs” for “whether major and nonmajor acquisition programs”.

1996—Subsec. (a)(2). Pub. L. 104-106, § 1503(a)(20), substituted “Under Secretary of Defense (Comptroller)” for “Comptroller of the Department of Defense”.

Subsec. (b). Pub. L. 104-106, § 4321(b)(1), substituted “October 13, 1994” for “the date of the enactment of the Federal Acquisition Streamlining Act of 1994”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(1) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

#### PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105-261, div. A, title VIII, § 816, Oct. 17, 1998, 112 Stat. 2088, provided that:

“(a) DESIGNATION OF PILOT PROGRAMS.—The Secretary of Defense, acting through the Secretaries of the military departments, shall designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support.

“(b) RESPONSIBILITIES OF PROGRAM MANAGERS.—The program manager for each acquisition program designated as a pilot program under this section shall have the responsibility for ensuring that the product support functions for the program are properly carried out over the entire life cycle of the program.

“(c) REPORT.—Not later than February 1, 1999, the Secretary of Defense shall submit to the congressional